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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on 8th July, 2019:—

BILL NO. 128 OF 2019

A Bill to provide for the regulation of use and application of Deoxyribonucleic Acid (DNA) technology for the purposes of establishing the identity of certain categories of persons including the victims, offenders, suspects, undertrials, missing persons and unknown deceased persons and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the DNA Technology (Use and Application) Regulation Act, 2019.

Short title,
extent and
commencement.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

2. (I) In this Act, unless the context otherwise requires,—

(i) “Board” means the DNA Regulatory Board established under sub-section (I) of section 3;

(ii) “bodily substances” means any biological material of, or from the body of, a person, whether living or dead, unidentified human remains, and includes intimate bodily substance and non-intimate bodily substance as defined in clauses (a) and (c) of sub-section (3) of section 23;

(iii) “Chairperson” means the Chairperson of the Board;

(iv) “crime scene index” means a list of entries of DNA profiles, in a DNA Data Bank derived from DNA samples found—

(a) at any place where an offence was committed or is reasonably suspected of having been committed; or

(b) on or within the body of the victim, or a person reasonably suspected of being a victim, of an offence; or

(c) on anything worn or carried by the victim at the time when an offence was, or is reasonably suspected of having been, committed; or

(d) on or within the body of a person, or on anything, or at any place, associated with the commission of an offence;

(v) “Director” means a Director of the National DNA Data Bank or a Regional DNA Data Bank appointed under section 27;

(vi) “DNA Data Bank” means a DNA Data Bank established under sub-section (I) of section 25;

(vii) “DNA laboratory” means any laboratory or facility established by the Central Government or a State Government or a person or an organisation which has been granted accreditation under this Act to perform DNA testing;

(viii) “DNA profile” means the result of analysis of a DNA sample for establishing human identification in respect of matters listed in the Schedule;

(ix) “DNA sample” means bodily substances of any nature collected for conducting DNA testing and includes the materials derived in a DNA laboratory from such bodily substances;

(x) “DNA testing” means the procedure followed in DNA laboratory to develop DNA profile;

(xi) “Fund” means Fund of the Board constituted under sub-section (I) of section 40;

(xii) “known sample” means the bodily substances of a person whose identity is established;

(xiii) “medical practitioner” means a medical practitioner who possesses any medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 and whose name has been entered in a State Medical Register under that Act;

(xiv) “Member” means a Member of the Board and includes the Chairperson and Vice-Chairperson;

(xv) "Member-Secretary" means the Member-Secretary of the Board;

(xvi) "missing persons' index" means a list of entries of DNA profiles, in a DNA Data Bank, derived from—

(a) unidentified human remains; or

(b) the personal effects of persons who are missing; or

(c) the bodily substances of relatives of the missing persons;

(xvii) "notification" means a notification published in the Official Gazette;

(xviii) "offenders' index" means a list of entries of DNA profiles of samples taken from offenders, in a DNA Data Bank;

(xix) "prescribed" means prescribed by rules made by the Central Government under this Act;

(xx) "proficiency testing" means a quality assurance measure used to monitor performance and identify areas in which improvement may be needed and includes—

(a) internal test which is devised and administered by the DNA laboratory; and

(b) external test, which may be open or blind, and which is devised and administered by an external agency;

(xxi) "quality assurance" includes the systematic actions necessary to demonstrate that a product or service meets specified standards of quality;

(xxii) "quality manual" means a document which specifies the quality procedures, quality systems and practices of an organisation relating to standards, quality control and quality assurance;

(xxiii) "quality system" means the organisational structure, responsibilities, procedure, process and resources for implementing quality management;

(xxiv) "regulations" means the regulations made by the Board under this Act;

(xxv) "suspects' index" or "undertrials' index" means a list of entries of DNA profiles derived from DNA samples taken from the suspects or, as the case may be, undertrials, in a DNA Data Bank;

(xxvi) "unknown deceased persons' index" means a list of entries of DNA profiles derived from DNA samples taken from the remains of a deceased person, whose identity is not known, maintained in a DNA Data Bank;

(xxvii) "validation process" means the process by which a procedure is evaluated to determine its efficacy and reliability for casework analysis and includes—

(a) developmental process, being the acquisition of test data and determination of conditions and limitations, of any new DNA methodology for use on case samples; and

(b) internal process, being an accumulation of test data within the DNA laboratory, to demonstrate that the established methods and procedures are performed as specified in the laboratory.

(2) The words and expressions used and not defined in this Act but defined in the Indian Penal Code, the Indian Evidence Act, 1872 and the Code of Criminal Procedure, 1973, shall have the meanings respectively assigned to them in those Codes or that Act.

Establishment
of DNA
Regulatory
Board.

CHAPTER II

DNA REGULATORY BOARD

3. (1) The Central Government may by notification, establish for the purposes of this Act, a Board to be called the DNA Regulatory Board.

(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

(3) The head office of the Board shall be at such place in the National Capital Region, as the Central Government may, by notification, specify.

(4) The Board may, with the approval of the Central Government, establish regional offices at such other places as it may deem necessary.

Composition
of Board.

4. The Board shall consist of the following Members to be appointed by the Central Government, namely:—

(a) the Secretary to the Government of India in the Department of Biotechnology, who shall be the Chairperson, *ex officio*;

(b) an eminent person from the field of biological sciences having experience of not less than twenty-five years in the field, who shall be the Vice-Chairperson;

(c) a member of the National Human Rights Commission to be nominated by its Chairperson, *ex officio*;

(d) the Director-General of the National Investigation Agency and the Director of the Central Bureau of Investigation or their nominees not below the rank of the Joint Director, to be nominated by the Central Government, *ex officio*;

(e) the Director-General of Police of a State, to be nominated by the Central Government by rotation every three years from amongst the States in alphabetical order, *ex officio*;

(f) the Director of the Centre for DNA Fingerprinting and Diagnostics, Hyderabad, to be nominated by the Central Government, *ex officio*;

(g) the Director of the National Accreditation Board for Testing and Calibration of Laboratories, New Delhi, to be nominated by the Central Government, *ex officio*;

(h) the Director of a Central Forensic Science Laboratory to be nominated by the Central Government, by rotation every three years, *ex officio*;

(i) an officer not below the rank of the Joint Secretary to the Government of India in the Ministry of Law and Justice, to be nominated by the Central Government, *ex officio*;

(j) an officer not below the rank of the Joint Secretary to the Government of India in the Ministry of Science and Technology, to be nominated by the Central Government, *ex officio*;

(k) one expert, from amongst persons of eminence in the field of biological sciences having experience of not less than twenty-five years in the field; and

(l) an officer, not below the rank of Joint Secretary to the Government of India or equivalent, with knowledge and experience in biological sciences, to be nominated by the Central Government, *ex officio*, who shall be the Member-Secretary.

5. (1) The Chairperson shall hold the office in the Board till he remains Secretary in the Department of Biotechnology.

Term of office and conditions of service of Chairperson, Vice-Chairperson and Member.

(2) The Vice-Chairperson appointed under clause (b) and the Member appointed under clause (k) of section 4, shall hold office for a period of three years or till he attains the age of sixty-five years, whichever is earlier and shall be eligible for re-nomination for a further period of three years.

(3) The Vice-Chairperson appointed under clause (b) and the Member appointed under clause (k) of section 4, shall be entitled to such pay and allowances as may be prescribed.

(4) The Chairperson and other *ex officio* Members may be entitled to such allowances as may be prescribed.

6. (1) The Board shall meet at such time and place and shall, subject to this section, observe such rules of procedure with regard to the transaction of business at its meetings (including the quorum at such meetings) as may be specified by regulations.

Meetings of Board.

(2) The Chairperson shall preside over the meetings of the Board and if, for any reason, he is unable to attend a meeting, the Vice-Chairperson and in his absence, the senior-most Member present, reckoned from the date of his appointment to the Board, shall preside over such meeting:

Provided that in case of common date of appointment of Members, the Member senior in age shall be considered as senior to the other Members.

(3) All questions which come up before any meeting of the Board shall be decided by a majority of votes of the Members present and voting, and in the event of an equality of votes, the Chairperson or, in his absence, the Vice-Chairperson or, in his absence, the Member presiding over the meeting, shall have a casting vote.

(4) Save as otherwise provided under this Act, the Chairperson shall have powers of general superintendence and direction of the affairs of the Board and may also exercise such other powers as may be delegated to him by the Board.

(5) All orders and decisions of the Board shall be authenticated by the Member-Secretary.

7. Any Member having any direct or indirect interest, whether pecuniary or otherwise, in any matter coming up for consideration at a meeting of the Board, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Board, and such Member shall not take part in any deliberation or decision of the Board with respect to that matter.

Member not to participate in meetings in certain cases.

8. (1) The Central Government may remove from office the Chairperson or any other Member, who—

Removal and resignation of Chairperson or Member and filling up of casual vacancies of Board.

(a) has been adjudged as an insolvent;

(b) has been convicted of an offence involving moral turpitude;

(c) has become physically or mentally incapable of acting as a Member;

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the Chairperson or a Member shall not be removed from office on the grounds specified under clause (d) or clause (e) except by an order made by the Central

Government after an inquiry made in this behalf in which the Chairperson or such Member has been given a reasonable opportunity of being heard in the matter.

(2) If, for any reason, other than temporary absence, any vacancy occurs in the office of a Member, the Central Government shall appoint another Member from the same category in accordance with the provisions of this Act to fill such vacancy, and such Member shall hold office for the remainder of the term of the Member in whose place he has been appointed.

(3) Any Member may, by a notice of not less than thirty days in writing under his hand, addressed to the Central Government, resign from office:

Provided that the Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person is duly appointed in his place or till the expiry of his term of office, whichever is earlier.

Vacancies,
etc., not to
invalidate
proceedings
of Board.

9. No act or proceeding of the Board shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Board; or

(b) any defect in the appointment of a person acting as a Member of the Board;
or

(c) any irregularity in the procedure of the Board not affecting the merits of the case.

Delegation of
powers of
Board.

10. (1) The Board may, by general or special order published in the Official Gazette, delegate to the Chairperson or any other Member, subject to such conditions, if any, as may be specified in the order, its functions under this Act (except the power to make regulations), as it may deem necessary.

(2) An order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Officers and
other
employees of
Board.

11. (1) The Board may, with the approval of the Central Government, appoint such officers and other employees, as it considers necessary, for the efficient discharge of its functions under this Act.

(2) The salaries and allowances payable to, and the other terms and conditions of service, including the manner of appointment, of the officers and other employees, under sub-section (1) shall be such as may be prescribed.

Functions of
Board.

12. The Board shall for the purposes of this Act, perform the following functions, namely:—

(a) advise the Central Government and the State Governments on all issues relating to establishing of DNA laboratories and DNA Data Banks, including planning, organisational structure, size, number, location and laying down guidelines, standards and procedures for establishment and functioning of such laboratories and Data Banks including manpower, infrastructure and other related issues concerning monitoring of their performance and activities; upgradation of DNA laboratories; and making recommendations on funds required for such purposes;

(b) grant accreditation to laboratories and to suspend or revoke such accreditation;

(c) supervise DNA laboratories and DNA Data Banks, including their quality control;

(d) develop the training modules and frame guidelines for training of manpower, including the police and investigating agencies dealing with DNA related matters;

(e) regulate and audit DNA training programmes for DNA laboratories and DNA Data Banks;

- (f) identify scientific advances and recommend research and development activities in DNA testing and related issues, including intellectual property issues;
- (g) lay down procedures for communication of information relating to DNA profile in civil and criminal proceedings and for investigation of crimes by law enforcement and other investigating agencies;
- (h) recommend methods for optimum use of DNA techniques and technologies for administration of justice or for such other relevant purposes as may be specified by regulations;
- (i) adopt and disseminate best practices, concerning the collection and analysis of DNA sample to ensure quality and consistency in the use of DNA techniques, and on all ethical and human rights issues relating to DNA testing in consonance with international guidelines enumerated by the United Nations Organisation and its specialised agencies, *inter alia*, relating to—
- (i) the rights and privacy of citizens;
 - (ii) the issues concerning civil liberties;
 - (iii) issues having ethical and other social implications in adoption of DNA testing technology; and
 - (iv) professional ethics in DNA testing;
- (j) give advice on matters under this Act which may be referred to it by the Central Government or the State Government;
- (k) make recommendations to the Central Government for the application of privacy protection in relation to the access to, or the use of, DNA samples and their analyses, and ensure—
- (i) implementation and sufficiency of such protection;
 - (ii) appropriate use and dissemination of DNA information;
 - (iii) accuracy, security and confidentiality of DNA information;
 - (iv) timely removal and destruction of obsolete, expunged or inaccurate DNA information; and
 - (v) such other steps as may be required to protect privacy;
- (l) facilitate exchange of ideas and information on DNA technology;
- (m) create awareness among public and other stakeholders, including police officers, prosecutors and judicial officers on the use and application of DNA technology;
- (n) assist in such manner as may be prescribed, in criminal investigation between various investigation agencies within the country and with any foreign State, international organisation or institution in dealing with DNA testing;
- (o) advise the Central Government on any modifications required to be made in respect of any matter under the Schedule;
- (p) frame guidelines for storage and destruction of bodily substances including known sample;
- (q) perform such other functions as may be prescribed.

CHAPTER III

ACCREDITATION OF DNA LABORATORIES

Prohibition of DNA testing, etc., without accreditation.

13. (1) No laboratory shall undertake DNA testing, analysing or any other procedure to generate data and perform analysis relating thereto without obtaining accreditation from the Board:

Provided that a laboratory functioning as on the date of the commencement of this Act, may undertake DNA testing or any other procedure relating thereto, for a period of sixty days from such commencement and apply to the Board in accordance with sub-section (2) for obtaining accreditation:

Provided further that such laboratory may, after making an application, continue to undertake DNA testing or any other procedure relating thereto, until its application is decided by the Board.

(2) A laboratory seeking accreditation under sub-section (1) shall apply to the Board in such form and manner along with such fees and documents as may be specified by regulations.

(3) A laboratory seeking accreditation shall comply with such onsite assessment requirements, standards and such other requirements, as may be specified by regulations.

(4) The application for renewal of accreditation shall be made to the Board at least sixty days prior to the expiration of the accreditation in such form and manner and along with such fees as may be specified by regulations.

Granting of accreditation or renewal thereof.

14. (1) The Board may, within a period of ninety days from the receipt of application for accreditation or renewal thereof, and after carrying out inspection of the laboratory, its records and books, and if it is satisfied that the laboratory fulfils all requirements under this Act, by order, grant accreditation to such laboratory or renew it, subject to such conditions as it may deem fit:

Provided that no application for accreditation shall be rejected by the Board without recording the reasons thereof, and giving the applicant an opportunity of being heard.

(2) The accreditation or renewal of accreditation under this section shall be valid for a period of two years.

Power of Board to suspend or revoke accreditation.

15. (1) The Board may revoke the accreditation granted to a DNA laboratory, if such laboratory fails to—

(a) undertake DNA testing or any other procedure relating thereto;

(b) comply with any of the conditions subject to which the accreditation has been granted;

(c) comply with the provisions of this Act or the rules and regulations made thereunder or any other law for the time being in force;

(d) comply with the guidelines issued by the Board under this Act; or

(e) submit or offer for inspection its laboratory or books of account and any other relevant documents, including audit reports, when so demanded by the officers or agency authorised by the Board.

(2) Where the Board is of the opinion that any delay in revoking accreditation given to a DNA laboratory is prejudicial or detrimental to the public interest, it may suspend the accreditation forthwith pending final decision on such revocation.

(3) No revocation of accreditation of a DNA laboratory shall be made by the Board without giving the laboratory an opportunity of being heard.

(4) On the revocation or suspension of accreditation of the DNA laboratory, the laboratory shall hand over all DNA samples and records relating to DNA testing from its laboratory to such DNA laboratory as may be directed by the Board and it shall not retain any sample or record.

16. Any laboratory aggrieved, by an order of rejection of its application for accreditation or renewal thereof under section 14 or an order of suspension or revocation of accreditation under section 15, may prefer an appeal to the Central Government or such other authority as that Government may, by notification, specify, within a period of sixty days from the date of such order, which shall be decided by the Central Government or the authority, as the case may be, within a period of sixty days from the date of receipt of such appeal.

Appeal against rejection, suspension or revocation of accreditation.

CHAPTER IV OBLIGATIONS OF DNA LABORATORY

17. (1) Every DNA laboratory, which has been granted accreditation for undertaking DNA testing or any other procedure under this Act, shall—

Obligations of DNA laboratory.

- (a) follow such standards and procedures for quality assurance in the collection, storage, testing and analysis of DNA sample,
- (b) establish and maintain such documentation and quality system,
- (c) prepare and maintain quality manuals containing such details,
- (d) share DNA data prepared and maintained by it with the National DNA Data Bank and the Regional DNA Data Bank, in such manner,

as may be specified by regulations.

(2) The DNA laboratory shall report the results of the DNA testing in conformity with the provisions of this Act and the regulations made thereunder.

18. Every DNA laboratory shall appoint a person to be in-charge of the laboratory and employ such scientific, technical and other staff, possessing such qualifications and experience as may be specified by regulations, for discharging the duties and performing the functions under this Act.

Appointment of in-charge, scientific, technical and other staff, of DNA laboratory.

19. The in-charge of the DNA laboratory shall,—

Responsibilities of person in charge of DNA laboratory.

- (a) take such measures for facilitating skill upgradation and advancement in the knowledge of its employees in the field of DNA testing and other related fields, as may be specified by regulations;
- (b) ensure that its employees undergo regular training in DNA related subjects, in such institutions, level and intervals, as may be specified by regulations;
- (c) maintain such records relating to the laboratory and its personnel as may be specified by regulations.

20. (1) Every DNA laboratory shall,—

Measures to be taken by DNA laboratory.

- (a) possess such infrastructure,
- (b) maintain such security and follow such procedure to avoid contamination of DNA samples,
- (c) establish and follow such documented evidence control system to ensure integrity of physical evidence,
- (d) establish and follow such validation process and written analytical procedure,

- (e) prepare such indices,
- (f) use such equipment for the methods it employs,
- (h) have such documented programme for calibration of instruments and equipment,
- (h) conduct annual quality audits with such standards,
- (i) instal such security system for the safety of DNA laboratory and its personnel,
- (j) charge such fees for conducting DNA testing or any other procedure relating thereto, not exceeding twenty-five thousand rupees,

as may be specified by regulations.

(2) The DNA laboratory shall, after deriving the DNA profile and depositing it with the DNA Data Bank,—

- (a) return the biological sample or remaining material for its preservation to the investigating officer in a criminal case till the disposal of the case or the order of the court; and
- (b) in all other cases, destroy the biological sample or remaining material and intimate the person concerned.

(3) For the purposes of this section,—

- (a) “analytical procedure” means an orderly step by step procedure designed to ensure operational uniformity;
- (b) “quality audit” means an inspection used to evaluate, confirm or verify activity related to quality;
- (c) “calibration” means a set of operations which establish, under specified conditions, the relationship between values indicated by a measuring instrument or measuring system, or values represented by a material, and the corresponding known values of a measurement.

21. (1) No bodily substances shall be taken from a person who is arrested for an offence (other than the specified offences) unless the consent is given in writing for the taking of the bodily substances.

Explanation.—For the purposes of this sub-section, “specified offences” means any offence punishable with death or imprisonment for a term exceeding seven years.

(2) If the consent required under sub-section (1) for taking of bodily substances from a person is refused or cannot be obtained, the person investigating the case may make an application to the Magistrate having jurisdiction for obtaining bodily substances from the arrested person.

(3) The Magistrate may, if he is satisfied that there is reasonable cause to believe that the bodily substances may confirm or disprove whether the person so arrested was involved in committing the offence, order for taking of bodily substances from such person.

22. (1) Subject to sub-section (2), any person who—

- (a) was present at the scene of a crime when it was committed; or
- (b) is being questioned in connection with the investigation of a crime; or
- (c) intends to find the whereabouts of his missing or lost relative, in disaster or otherwise,

may voluntarily consent in writing to bodily substances being taken from him for DNA testing.

Consent for
taking bodily
substances to
be taken from
a person
arrested.

Bodily
substances
given
voluntarily.

(2) If the person giving voluntary consent is below the age of eighteen years and the consent of the parent or guardian of such person is refused or cannot be obtained, the person investigating the case may make an application to the Magistrate having jurisdiction, for obtaining such bodily substances and the Magistrate, if he is satisfied that there is reasonable cause for taking the bodily substances from such person, order for taking of bodily substances from that person.

23. (1) For the purposes of this Act, samples for DNA testing may be collected from the following sources, namely:—

- (a) bodily substances;
- (b) scene of occurrence or scene of crime;
- (c) clothing and other objects; or
- (d) such other sources as may be specified by regulations.

Sources and manner of collection of samples for DNA testing.

(2) For the purposes of sub-section (1),—

(a) any intimate bodily substance from living persons shall be collected, and intimate forensic procedures shall be performed, by a medical practitioner;

(b) any non-intimate bodily substance shall be collected and non-intimate forensic procedure shall be performed by the technical staff trained for the collection of samples for DNA testing, under the supervision of a medical practitioner or a scientist having expertise in molecular biology or such other person as may be specified by regulations:

Provided that before collecting bodily substances for DNA testing of a victim or a person reasonably suspected of being a victim who is alive, or a relative of a missing person, or a minor or a disabled person, written consent of such victim or such relative or the parent or guardian of such minor or disabled person shall be obtained and, in case of refusal, the person investigating the case may make an application to the Magistrate having jurisdiction, for obtaining such bodily substances and the Magistrate, if he is satisfied that there is reasonable cause for taking the bodily substances from such person, order for taking of bodily substances from that person.

(3) For the purposes of this section,—

(a) “intimate bodily substance” means a sample of blood, semen or any other tissue, fluid, urine or pubic hair, or a swab taken from a person's body orifice other than mouth; or skin or tissue from an internal organ or body part, taken from or of a person, living or dead;

(b) “intimate forensic procedure” means any of the following forensic procedures conducted on a living person, namely:—

- (i) external examination of the genital or anal area, the buttocks and breasts in the case of a female;
- (ii) taking of a sample of blood;
- (iii) taking of a sample of pubic hair;
- (iv) taking of a sample by swab or washing from the external genital or anal area, the buttocks and breasts in the case of a female;
- (v) taking of a sample by vacuum suction, by scraping or by lifting by tape from the external genital or anal area, the buttocks and breasts in the case of a female;

(vi) taking of a photograph or video recording of, or an impression or cast of a wound from, the genital or anal area, buttocks and breasts in the case of a female;

(c) “non-intimate bodily substance” means any of the following taken from or of a person, living or dead, namely:—

(i) handprint, fingerprint, footprint or toe print;

(ii) a sample of hair other than pubic hair;

(iii) a sample taken from a nail or under a nail;

(iv) swab taken from any part of a person's body including mouth, but not any other body orifice;

(v) saliva; or

(vi) a skin impression;

(d) “non-intimate forensic procedure” means any of the following forensic procedures conducted on a living individual, namely:—

(i) examination of a part of the body other than the genital or anal area, the buttocks and breasts in the case of a female, that requires touching of the body or removal of clothing;

(ii) taking of a sample of hair other than pubic hair;

(iii) taking of a sample from a nail or under a nail;

(iv) taking of a buccal swab with consent;

(v) taking of a sample by swab or washing from any external part of the body other than the genital or anal area, the buttocks and breasts in the case of a female;

(vi) scraping or lifting by tape from any external part of the body other than the genital or anal area, the buttocks and breasts in the case of a female;

(vii) taking of a handprint, fingerprint, footprint or toe print; or

(viii) taking of a photograph or video recording of, or an impression or cast of a wound from, a part of the body other than the genital or anal area, the buttocks and breasts in the case of a female.

Taking of
bodily
substances for
re-
examination.

24. If the trial court is satisfied with the plea of the accused person that the bodily substances taken from such person or collected from the place of occurrence of crime had been contaminated, the court may direct the taking of fresh bodily substances for re-examination.

CHAPTER V

DNA DATA BANK

Establishment
of DNA Data
Banks.

25. (1) The Central Government shall, by notification, establish a National DNA Data Bank and such number of Regional DNA Data Banks for every State, or two or more States, as it may deem necessary.

(2) A Regional DNA Data Bank shall share all DNA data stored and maintained by it with the National DNA Data Bank.

(3) The National DNA Data Bank shall receive DNA data from Regional DNA Data Banks and shall store the DNA profiles received from the DNA laboratories in such format as may be specified by regulations.

26. (1) Every DNA Data Bank shall maintain the following indices for various categories of data, namely:—

- (a) a crime scene index;
- (b) a suspects' index or undertrials' index;
- (c) an offenders' index;
- (d) a missing persons' index; and
- (e) unknown deceased persons' index.

Maintenance
of indices by
DNA Data
Bank.

(2) In addition to the indices referred to in sub-section (1), every DNA Data Bank shall maintain, in relation to each DNA profile, the following information, namely:—

- (a) in case of a profile in the suspects' index or undertrials' index or offenders' index, the identity of the person from whose bodily substances the profile was derived; and
- (b) in case of a profile, other than a profile in the suspects' index or undertrials' index or offenders' index, the case reference number of the investigation associated with the bodily substances from which the profile was derived.

(3) The indices maintained under sub-section (1) shall include information of data based on DNA testing and records relating thereto, prepared by a DNA laboratory.

27. (1) The Central Government shall appoint a Director of the National DNA Data Bank, on the recommendations of a selection committee to be constituted by that Government, in such manner and consisting of such persons, as may be prescribed, for the purposes of execution, maintenance and supervision of the National DNA Data Bank.

Directors of
DNA Data
Banks.

(2) The Director of the National DNA Data Bank shall be a person of eminence possessing such educational qualifications and experience in biological sciences, as may be prescribed.

(3) The Director of the National DNA Data Bank shall be not below the rank of a Director to the Government of India or equivalent and shall function under the supervision and control of the Board.

(4) The Director of the National DNA Data Bank shall exercise such powers and perform such duties, as may be specified by regulations.

(5) The Central Government may appoint a Director for each Regional DNA Data Bank, who shall be not below the rank of Deputy Secretary to the Government of India or equivalent, and shall function under the supervision and control of the Board.

28. (1) The Board may, with the approval of the Central Government, appoint such officers and other employees, as it considers necessary, for the efficient discharge of the functions of the National DNA Data Bank and the Regional DNA Data Banks.

Officers and
other
employees of
National DNA
Data Bank
and Regional
DNA Data
Banks.

(2) The salaries and allowances payable to, and the terms and other conditions of service including the manner of appointment, of the Director of the National DNA Data Bank and the Director of each of the Regional DNA Data Bank shall be such as may be prescribed.

(3) The Board may appoint such number of officers and experts and other employees to assist the DNA Data Banks in the discharge of its functions, on such remunerations and upon such terms and conditions of service, including the manner of appointment, as may be specified by regulations.

29. (1) The criteria and procedure to be followed by the National DNA Data Bank on receipt of a DNA profile for comparison with DNA profiles maintained in the DNA Data Bank and communication of the results shall be made to such persons and in such manner as may be specified by regulations:

Comparison
and
communication
of DNA
profiles.

Provided that if the DNA profile is derived from the bodily substances of a living person who is neither an offender nor a suspect or an undertrial, no comparison shall be made of it with the DNA profiles in the offenders' index or suspects' index or undertrials' index maintained in the DNA Data Bank.

(2) Any information relating to a person's DNA profile contained in the suspects' index or undertrials' index or offenders' index of the DNA Data Bank shall be communicated only to the authorised persons.

Sharing of
DNA profiles
with foreign
Government
or
international
organisation.

30. (1) On receipt of a DNA profile from the Government of a foreign State or an international organisation or any institution of such Government or international organisation, the National DNA Data Bank may compare such DNA profile with the DNA profiles contained in the crime scene index, the offenders' index, the suspects' index, the undertrials' index, the missing persons' index and the unknown deceased persons' index, to determine whether there is a match between the profiles and the Director of the National DNA Data Bank may, with the prior approval of the Central Government communicate any of the following information to such Government or organisation or institution, as the case may be, through any agency authorised by notification by the Central Government, namely:—

(a) that there is no match between the profiles;

(b) if there is a match between the profiles, any information relating to such matching DNA profile; or

(c) if, in the opinion of the Director of the National DNA Data Bank, the DNA profile is similar to the one contained in the DNA Data Bank, information relating to such similar DNA profile.

(2) After receiving the similar DNA profile under clause (c) of sub-section (1), if the foreign Government or organisation or institution referred to in sub-section (1) informs that the possibility of a match between the similar DNA profile with the DNA profile provided by it has not been excluded, any further information in relation to such similar DNA profile may also be furnished in the manner specified in sub-section (1).

(3) The Central Government may, in consultation with the Board,—

(a) determine the nature and extent of sharing DNA profiles in respect of offenders, suspects, undertrials, missing persons and unknown deceased persons with the Government of a foreign State or an international organisation or an institution established by that Government or organisation, as the case may be;

(b) seek similar information from such foreign State, organisation or institutions, and the provisions of sub-sections (1) and (2) shall *mutatis mutandis*, apply.

31. (1) The information contained in the crime scene index shall be retained.

(2) The Director of the National DNA Data Bank shall remove from the DNA Data Bank the DNA profile,—

(i) of a suspect, after the filing of the police report under the statutory provisions or as per the order of the court;

(ii) of an undertrial, as per the order of the court,

under intimation to him, in such manner as may be specified by regulations.

(3) The National DNA Data Bank shall, on receiving a written request of a person who is neither an offender nor a suspect or an undertrial, but whose DNA profile is entered in the crime scene index or missing persons' index of the DNA Data Bank, for removal of his DNA profile therefrom, remove the DNA profile of such person from DNA Data Bank under intimation to the person concerned, in such manner as may be specified by regulations:

Retention and
removal of
records.

Provided that where such DNA profile is of a minor or a disabled person, removal shall be made on receiving written request from a parent or the guardian of such minor or disabled person.

(4) Subject to this section, the criteria for entry, retention and removal of any DNA profile in, or from, the DNA Data Bank and DNA laboratories shall be such as may be specified by regulations.

CHAPTER VI

PROTECTION OF INFORMATION

32. (1) Subject to the provisions of this Act, the Board shall ensure that the information relating to DNA profiles, DNA samples and any records thereof, forwarded to, or in custody of the National DNA Data Bank or the Regional DNA Data Bank or a DNA laboratory or any other person or authority under this Act, are secured and kept confidential.

Security and confidentiality of information.

(2) The Board shall take all necessary measures to ensure that the information referred to in sub-section (1) are protected against access, use or disclosure not permitted under this Act or regulations made thereunder, and against accidental or intentional destruction, loss or damage.

(3) Without prejudice to sub-sections (1) and (2), the Board shall—

(a) adopt and implement appropriate technical and organisational security measures;

(b) ensure that every agency appointed or engaged for performing any functions under this Act have in place appropriate technical and organisational security measures for the information; and

(c) ensure that the agreements or arrangements, entered into with any investigation agency, international organisation or institution, impose obligations equivalent to those imposed on the Board under this Act, and require such agency, organisation or institution to act only on instructions from the Board.

(4) Notwithstanding anything contained in any other law for the time being in force, and save as otherwise provided in this Act, the Board or any of its officers or other employee, the Director of the National or Regional DNA Data Bank or any of its officers or other employees, or the in-charge and other staff of DNA laboratory or any officer or employee of the agency engaged under this Act shall not, whether during his service or thereafter, reveal any information relating to DNA profiles, DNA samples and any records thereof to anyone.

33. All DNA data, including DNA profiles, DNA samples and records thereof, contained in any DNA laboratory and DNA Data Bank shall be used only for the purposes of facilitating identification of the person and not for any other purpose.

Use of DNA profiles, DNA samples and records, etc., for facilitating identification of persons.

34. Any information relating to DNA profiles, DNA samples and records thereof, maintained in a DNA Data Bank shall be made available for the following purposes, namely:—

(a) facilitating the identification of persons in criminal cases by the law enforcement and investigating agencies;

(b) judicial proceedings, in accordance with the rules of admissibility of evidence;

(c) facilitating prosecution and adjudication of criminal cases;

(d) taking defence by an accused in the criminal case in which he is charged;

Access to information in certain cases.

Access to information for operation, maintenance and training.

(e) investigation relating to civil disputes or other civil matters or offences or cases specified in the Schedule, by making such information available to the concerned parties with the approval of the court, or to the concerned authority; or

(f) such other purposes, as may be specified by regulations.

35. Access to such information contained in the National DNA Data Bank and the Regional DNA Data Banks may be made available by the Director, if he considers appropriate,—

(a) to a person or class of persons, for the sole purpose of proper operation and maintenance of the DNA Data Bank; and

(b) to the personnel of any DNA laboratory for the sole purpose of training, in accordance with such terms and conditions as may be specified by regulations.

Access to information in DNA Data Bank for one time keyboard search.

36. A person who is authorised to access an index of the DNA Data Bank, including information of DNA identification records or DNA profile in that index, may also access that index for the purposes of carrying out one time keyboard search on information obtained from any DNA sample collected for the purpose of criminal investigation, except for a DNA sample voluntarily submitted solely for elimination purposes.

Explanation.—For the purposes of this section, “one time keyboard search” means a search under which information obtained from a DNA sample is compared with the information in the index of the DNA Data Bank, without resulting in the information obtained from the DNA sample being included in the index.

Restriction on access to information in crime scene index.

37. Access to the information in the crime scene index contained in the DNA Data Bank shall be restricted, in such manner as may be specified by regulations, if such information relates to a DNA profile derived from bodily substances of—

(a) victim of an offence which forms or formed the object of relevant investigation; or

(b) a person who has been eliminated as a suspect in the relevant investigation.

Prohibition on access to information in DNA Data Bank.

38. (1) No person who receives the DNA profile for entry in the DNA Data Bank shall use it or allow or cause it to be used for purposes other than those for which it has been collected in accordance with the provisions of this Act.

(2) Save as otherwise provided in this Act, no person shall communicate, or authorise the communication of, or allow or cause to be communicated, any information on DNA profiles contained in the DNA Data Banks or the information communicated under section 29 or section 30.

(3) No person to whom information is communicated or who has access to information under this Act shall use that information for any purpose other than for which the communication or access is permitted under the provisions of this Act.

CHAPTER VII

FINANCE, ACCOUNTS, AUDIT AND REPORTS

Grants by Central Government.

39. The Central Government may, after due appropriation made by Parliament by law, in this behalf, make to the Board grants of such sums of money as the Central Government may consider necessary.

DNA Regulatory Board Fund.

40. (1) There shall be constituted a Fund to be called the DNA Regulatory Board Fund and there shall be credited thereto—

(a) any grants and loans made to the Board under this Act;

(b) all sums received by the Board including fees or charges, or donations from such other source as may be decided by the Central Government; and

(c) any income from investment of the amount of the Fund.

(2) The Fund shall be applied by the Board for meeting,—

(a) the salaries and allowances payable to the Members, the officers, experts and the other employees, including administrative expenses, of the Board; and

(b) the expenses for carrying out the purposes authorised under this Act.

41. (1) The Board shall prepare, in such form and at such time in each financial year, as may be prescribed, its budget for the next financial year showing the estimated receipts and expenditure of the Board and forward the same to the Central Government. Budget.

(2) The Board, with the prior approval of the Central Government, shall adopt financial regulation which specifies in particular, the procedure for drawing up and implementing the Board's budget.

42. The Board shall prepare in such form and at such time in each financial year, as may be prescribed, its annual report giving a full account of its activities during the previous financial year and submit a copy thereof to the Central Government. Annual report.

43. (1) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India. Accounts and audit of Board.

(2) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Board under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board.

(3) The accounts of the Board, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the Central Government by the Board.

(4) The accounts of the Board shall be audited by the Comptroller and Auditor-General of India annually and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India.

44. The Central Government shall cause the annual report and auditor's report of the Board to be laid, as soon as may be after they are received, before each House of Parliament. Annual report and auditor's report to be laid before Parliament.

CHAPTER VIII

OFFENCES AND PENALTIES

45. Whoever, by virtue of his employment or official position or otherwise, has in his possession, or having access to, individually identifiable DNA information kept in the DNA laboratory or DNA Data Bank, wilfully discloses it in any manner to any person or agency not entitled to receive it under this Act, or under any other law for the time being in force, shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to one lakh rupees. Penalty for unauthorised disclosure of information in DNA Data Bank.

46. Whoever, without authorisation, wilfully obtains individually identifiable DNA information from the DNA laboratory or DNA Data Bank, shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to one lakh rupees. Penalty for obtaining information from DNA Data Bank without authorisation.

Penalty for using DNA sample or result without authorisation.

Penalty for unlawful access to information in DNA Data Bank.

Penalty for destruction, alterations, contamination or tampering with biological evidence.

Penalty for contravention where no specific punishment is provided.

Offences by companies or institutions.

47. Whoever, without authorisation, wilfully uses any DNA sample or result of any DNA analysis, shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to one lakh rupees.

48. Whoever, accesses information stored in the DNA Data Bank, otherwise than in accordance with the provisions of this Act, shall be punishable with imprisonment for a term which may extend to two years and also with fine which may extend to fifty thousand rupees.

49. Whoever, knowingly and intentionally, destroys, alters, contaminates or tampers with biological evidence which is required to be preserved under any law for the time being in force, with the intention to prevent that evidence from being subjected to DNA testing or to prevent the production or use of that evidence in a judicial proceeding, shall be punishable with imprisonment for a term which may extend to five years and also with fine which may extend to two lakh rupees.

50. Whoever, contravenes any of the provisions of this Act or the rules and regulations made thereunder for which no penalty is provided in this Act, shall be punishable with imprisonment for a term which may extend to two years and also with fine which may extend to fifty thousand rupees.

51. (1) Where an offence under this Act, has been committed by a company or institution, every person who at the time the offence was committed was in-charge of, and was responsible to, the company or institution for the conduct of the business of the company or institution, as well as the company or institution, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company or institution and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company or institution, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.—*for the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

CHAPTER IX

MISCELLANEOUS

Chairperson, Members, officers to be public servants.

52. The Chairperson, Members and other officers of the Board, National DNA Data Bank and Regional DNA Data Banks shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

53. No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of the Central Government or the Chairperson, Vice-Chairperson or any Member or officer of the Board or the National DNA Data Bank or the Regional DNA Data Banks acting under this Act for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

Protection of action taken in good faith.

54. (1) If at any time the Central Government is of the opinion—

(a) that, on account of circumstances beyond the control of the Board, it is unable to discharge the functions or perform the duties assigned to it by or under the provisions of this Act; or

(b) that the Board has persistently defaulted in complying with any direction issued by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default, the financial position of the Board or the administration of the Board has suffered; or

(c) that circumstances exist which render it necessary in the public interest to do so,

it may, by notification, supersede the Board for such period, not exceeding six months, as may be specified in the notification:

Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Board to make representations against the proposed supersession and shall consider the representations, if any, of the Board.

(2) Upon the publication of a notification under sub-section (1) superseding the Board,—

(a) the Chairperson and other Members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under this Act, be exercised or discharged by or on behalf of the Board shall, until the Board is reconstituted under sub-section (3), be exercised and discharged by an administrator who shall be an official not below the rank of a Secretary to the Government of India, to be appointed by the Central Government; and

(c) all property owned or controlled by the Board shall, until the Board is reconstituted under sub-section (3), vest in the Central Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may reconstitute the Board by a fresh appointment and in such case any person or persons who vacated their offices under clause (a) of sub-section (2), shall not be deemed to be disqualified for appointment:

Provided that the Central Government may, at any time, before the expiration of the period of supersession, take action under this sub-section.

(4) The Central Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

Power of Central Government to supersede Board.

55. (1) Without prejudice to the foregoing provisions of this Act, the Board shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time.

Power of Central Government to issue directions.

(2) If any dispute arises between the Central Government and the Board as to whether a question is or is not a question of policy, the decision of the Central Government thereon shall be final.

Power to amend Schedule.

56. (1) The Central Government may, if it is of the opinion that it is expedient so to do, by notification, amend the Schedule so as to include therein or exclude therefrom, or vary the description of, any entry in any Part thereof.

(2) Every notification issued under sub-section (1) shall, as soon as may be after it is issued, be laid before each House of Parliament.

Court not to have jurisdiction.

57. No court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Board is empowered by or under this Act to determine.

Power to make rules.

58. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the pay and allowances of the Vice-Chairperson and the Member under sub-section (3), and the allowances payable to the Chairperson and other *ex officio* Members under sub-section (4) of section 5;

(b) the salaries and allowances payable to, and the terms and other conditions of service of officers and employees of the Board under sub-section (2) of section 11;

(c) manner in which the Board shall assist and co-operate in criminal investigation between various investigation agencies within the country and with any foreign State, international organisation or institution in dealing with DNA testing under clause (n) of section 12;

(d) such other functions of the Board under clause (q) of section 12;

(e) the manner of constitution of a selection committee and persons comprising the committee, for the appointment of a Director of the National DNA Data Bank under sub-section (1) of section 27;

(f) the educational qualifications and experience of the Director of the National DNA Data Bank under sub-section (2) of section 27;

(g) the salaries and allowances payable to, and the terms and other conditions of service including the manner of appointment, of the Director of the National DNA Data Bank and the Director of each of the Regional DNA Data Bank, under sub-section (2) of section 28;

(h) the form in which and the time at which the Board shall prepare its budget under sub-section (1) of section 41;

(i) the form in which and the time at which the Board shall prepare its annual report under section 42;

(j) the form in which the annual statement of accounts shall be prepared by the Board under sub-section (1) of section 43; and

(k) any other matter which is to be, or may be prescribed, or in respect of which provision is to be, or may be made by rules for carrying out the provisions of this Act.

Power to make regulations.

59. (1) The Board may, with the previous approval of the Central Government and after previous publication, by notification, make regulations consistent with this Act and the rules made thereunder, to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the time and place at which the Board shall meet and the procedure it shall observe with regard to the transaction of business at its meetings (including quorum at such meetings), under sub-section (1) of section 6;

- (b) the other relevant purposes for the optimum use of DNA techniques and technologies under clause (h) of section 12;
- (c) the form, the fee and the manner in which an application for accreditation shall be made by a DNA laboratory under sub-section (2) of section 13;
- (d) onsite assessment requirements, standards and such other requirements to be complied by a DNA laboratory under sub-section (3) of section 13;
- (e) the form, the fee and the manner in which an application for renewal of accreditation shall be made by a DNA laboratory under sub-section (4) of section 13;
- (f) the obligations to be carried out by a DNA laboratory under sub-section (1) of section 17;
- (g) the educational qualifications, experience and other eligibility criteria in respect of person in charge of a DNA laboratory, technical and managerial staff, and other employees of DNA laboratory under section 18;
- (h) the measures to be taken, the level and intervals in which the employees shall undergo training and the records to be maintained, by the in charge of a DNA laboratory under section 19;
- (i) the measures to be taken by DNA laboratories under sub-section (1) of section 20;
- (j) the other sources for collection of DNA sample, under clause (d) of sub-section (1) of section 23;
- (k) such other person under whose supervision DNA sample may be collected, under clause (b) of sub-section (2) of section 23;
- (l) the format in which the National DNA Data Bank shall receive DNA data from Regional DNA Data Banks and store the DNA profiles under sub-section (3) of section 25;
- (m) the powers and duties of the Director of the National DNA Data Bank under sub-section (4) of section 27;
- (n) the appointment of number of officers, experts and other employees, their remunerations, terms and conditions of service, including the manner of appointment under sub-section (3) of section 28;
- (o) the criteria and the procedure to be followed by the National DNA Data Bank on receipt of a DNA profile, the person to whom the result shall be communicated and the manner of communication under sub-section (1) of section 29;
- (p) the manner in which the DNA profile of a suspect or an undertrial shall be expunged by the Director of the National DNA Data Bank under sub-section (2) of section 31;
- (q) the manner in which the DNA profile of a person who is neither an offender nor a suspect shall be expunged from the crime scene index or a missing persons' index under sub-section (3) of section 31;
- (r) other criteria for entry, retention and expunction of any DNA profile under sub-section (4) of section 31;
- (s) the other purposes for which the information relating to DNA profiles, DNA samples and records relating thereto shall be made available under clause (f) of section 34;
- (t) the terms and conditions for access to information under section 35;

(u) the manner in which access to the information in the crime scene index shall be restricted under section 37;

(v) any other matter which is to be, or may be, or in respect of which provisions is to be, or may be, made by regulations for carrying out the provisions of the Act.

Rules and regulations to be laid before Parliament.

60. Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Power to remove difficulties.

61. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary, for removing the difficulty:

Provided that no order shall be made under this section after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

THE SCHEDULE

[See sections 2(1)(viii), 12(o), 34(e) and 56(1)]

List of matters for DNA testing**PART A**

Offences under Indian Penal Code (45 of 1860) where DNA testing is useful for investigation of offences.

PART B

Offences under special laws:

- (i) The Immoral Traffic (Prevention) Act, 1956 (104 of 1956);
- (ii) The Medical Termination of Pregnancy Act, 1971 (34 of 1971);
- (iii) The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (57 of 1994);
- (iv) The Protection of Women from Domestic Violence Act, 2005 (43 of 2005);
- (v) The Protection of Civil Rights Act, 1955 (22 of 1955);
- (vi) The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989);
- (vii) The Motor Vehicles Act, 1988 (59 of 1988).

PART C

Civil disputes and other civil matters:

- (i) Parental dispute (maternity or paternity);
- (ii) Issues relating to pedigree;
- (iii) Issues relating to assisted reproductive technologies (surrogacy, *in-vitro* fertilisation and intrauterine implantation or such other technologies);
- (iv) Issues relating to transplantation of human organs (donor and recipient) under the Transplantation of Human Organs Act, 1994 (42 of 1994);
- (v) Issues relating to immigration or emigration;
- (vi) Issues relating to establishment of individual identity.

PART D

Other cases:

- (i) Medical negligence;
- (ii) Unidentified human remains;
- (iii) Identification of abandoned or disputed children and related issues.

STATEMENT OF OBJECTS AND REASONS

The Deoxyribonucleic Acid (DNA) is like a set of instructions or blueprint of all living forms, and it encodes a detailed set of plans for building different pieces of the cell of a living organism to grow and function. The DNA content of every human individual is comprised of one-half of the DNA from each of the two parents. The DNA blueprint varies from one individual to another, and it is this variation, which makes every individual (except identical twins) unique and different. The individual-to-individual variations in DNA permit its use as a means of identification and for establishment of biological relationships between individuals.

2. DNA technology, based on sound scientific principles has been found to be very effective in establishing the parentage of a child and identifying the source of a biological specimen obtained from a scene of crime. The concerns regarding appropriate use of DNA technology by the courts of law and other agencies has made it necessary to develop guidelines and standards for the DNA testing.

3. DNA technology has the potential of wide application in the justice delivery systems. In criminal cases, it helps in investigation of crimes through biological evidence including semen evidence in rape cases, blood evidence in murder cases, saliva evidence in identification of source of anonymous threat letters, etc. In civil cases, it helps in investigations relating to identification of victims of disasters like cyclones, air crash, etc. A number of crimes are committed by repeat offenders, who apprehension and conviction will be aided by comparison of biological evidence at the scene of crime with DNA profiles stored in a DNA Data Bank. At the same time, the DNA analysis offers substantial information, which if misused or improperly used, can cause harm to individuals or society.

4. Recognising the need for regulation of the use and application of DNA technology, a DNA Profiling Advisory Committee comprising of members from the fields of molecular biology, forensic science, human genetics, population biology, bioethics, legal profession, law enforcement agencies, etc., was constituted in December, 2003 to make recommendations for enacting suitable legislation. On the recommendations of the said Committee, a draft Bill was prepared. Later on, an Expert Committee chaired by the Secretary, Department of Biotechnology, was constituted in 2012 to discuss the privacy related issues. Based on the recommendations of the Expert Committee, the Bill was revised and subsequently referred to the Law Commission of India who in its two hundred and seventy-first report suggested the enactment of a legislation.

5. In view of the above, the DNA Technology (Use and Application) Regulation Bill, 2018 seeks to regulate the use of DNA technology for the purposes of establishing the identity of certain categories of persons including the victims, offenders, suspects, under-trials, missing persons and unknown deceased persons. The Bill, *inter alia*, seeks to—

(i) prohibit laboratories from undertaking DNA testing, analysing, etc., without obtaining accreditation;

(ii) establish a National DNA Data Bank and Regional DNA Data Banks which shall store and maintain the DNA profiles in accordance with the provisions relating to the use and access to information, its retention and expunction;

(iii) establish a DNA Regulatory Board to carry out the functions assigned to it under the proposed legislation which, *inter alia*, include—

(a) advising the Central Government and the State Governments on all issues relating to establishing of DNA laboratories and DNA Data Banks and laying down guidelines, standards and procedures for establishment and functioning of such laboratories and Data Banks;

(b) granting accreditation to laboratories for undertaking DNA testing, analysing, etc., and to suspend or revoke such accreditation;

(c) assisting in criminal investigation between various investigation agencies within the country and with any foreign State, international organisation or institution; and

(d) making recommendations to the Central Government for the application of privacy protection in relation to the access to, or the use of, DNA samples and their analysis;

(iv) make provision for the security and confidentiality of information relating to DNA profiling, DNA samples and any records thereof, forwarded to or in the custody of National DNA Data Bank, Regional DNA Data Banks, DNA laboratories or any person or authority;

(v) provide for offences and penalties for contravention of certain provisions of the Bill.

6. The Bill seeks to achieve the above objectives.

NEW DELHI;

DR. HARSH VARDHAN.

The 27th June, 2019.

Notes on Clauses

Clause 2 of the Bill seeks to define the various expressions used in the Bill.

Clause 3 of the Bill seeks to provide for the establishment of the DNA Regulatory Board as body corporate, having perpetual succession and a common seal, whose head office shall be at such place in the National Capital Region, as the Central Government may specify. The Board may, with the approval of the Central Government, establish regional offices at such other places as it may deem necessary.

Clause 4 of the Bill seeks to provide for the composition of the DNA Regulatory Board which shall consist of a Chairperson, a Vice-Chairperson, Member-Secretary and ten other Members to carry out the functions assigned to it under the Bill.

Clause 5 of the Bill seeks to provide for the terms of office, conditions of service of, Chairperson, Vice-Chairperson and other Members of the Board including their pay and allowances.

Clause 6 of the Bill seeks to provide for the procedure for meetings of the Board. It further provides that the Chairperson shall have powers of general superintendence and direction of the affairs of the Board and may also exercise such other powers as may be delegated to him by the Board.

Clause 7 of the Bill seeks to provide that the Members of the Board shall not participate in meetings in certain cases.

Clause 8 of the Bill seeks to provide for the removal and resignation of Chairperson or Member and filling up of casual vacancies of Board.

Clause 9 of the Bill seeks to provide that no act or proceeding of the Board shall be invalid merely by reason of any vacancy in, or any defect in the constitution of, the Board; or any defect in the appointment of a person acting as a Member of the Board; or any irregularity in the procedure of the Board not affecting the merits of the case.

Clause 10 of the Bill seeks to provide that the Board may, by general or special order published in the Official Gazette, delegate to the Chairperson or any other Member, subject to such conditions, if any, as may be specified in the order, its functions under the Bill (except the power to make regulations), as it may deem necessary. It further provides for laying of such order before each House of Parliament.

Clause 11 of the Bill seeks to provide that the Board may, with the previous approval of the Central Government, appoint such officers and other employees, as it considers necessary, for the efficient discharge of its functions under the Bill. It further provides that the salaries and allowances payable to, and the other terms and conditions of service, including the manner of appointment, of the officers and employees, shall be prescribed by rules made by the Central Government.

Clause 12 of the Bill enumerates the various functions of the Board which shall include, *inter alia*, (a) advising the Central Government and the State Governments on all issues relating to establishing of DNA laboratories and DNA Data Banks and laying down guidelines, standards and procedures for establishment and functioning of such laboratories and Data Banks;

(b) granting accreditation to laboratories for undertaking DNA testing, analysing, etc., and to suspend or revoke such accreditation; (c) assisting in criminal investigation between various investigation agencies within the country and with any foreign State, international organisation or institution; and (d) making recommendations to the Central Government for the application of privacy protection in relation to the access to, or the use of, DNA samples and their analyses.

Clause 13 of the Bill seeks to provide that no laboratory shall undertake DNA testing, analysing or any other procedure to generate data and perform analysis relating thereto without obtaining accreditation from the Board. It further provides that a laboratory functioning as on the date of the commencement of the Bill, may undertake DNA testing or any other procedure relating thereto, for a period of sixty days from such commencement and apply to the Board in accordance with sub-clause (2) of the said clause, for obtaining accreditation and that such laboratory may, after making an application, continue to undertake DNA testing or any other procedure relating thereto, until the Board decides its application. It also provides that the application for renewal of accreditation shall be made to the Board at least sixty days prior to the expiration of the accreditation in such form and manner and along with such fees as may be specified by regulations made by the Board.

Clause 14 of the Bill provides for grant of accreditation or renewal to the laboratory which seeks to undertake DNA testing, analysing or any other procedure to generate data and perform analysis relating thereto. It further provides that the accreditation or renewal of accreditation under this clause shall be valid for a period of two years.

Clause 15 of the Bill seeks to provide for the power of Board to suspend or revoke accreditation granted to a DNA laboratory, if such laboratory fails to comply with the conditions specified therein. It further provides that no revocation of accreditation of a DNA laboratory shall be made by the Board without giving the laboratory an opportunity of being heard. It also provides that on the revocation or suspension of accreditation of the DNA laboratory, the laboratory shall hand over all DNA samples and records relating to DNA testing from its laboratory to such DNA laboratory as may be directed by the Board and it shall not retain any sample or record.

Clause 16 of the Bill seeks to provide that any laboratory aggrieved by an order of rejection of its application for accreditation or renewal thereof under clause 14 or an order of suspension or revocation of accreditation under clause 15, may prefer an appeal to the Central Government or such other authority as that Government may, by notification, specify, within a period of sixty days from the date of such order, which shall be decided by the Central Government or the authority, as the case may be, within a period of sixty days from the date of receipt of such appeal.

Clause 17 of the Bill seeks to provide that every DNA laboratory, which has been granted accreditation for undertaking DNA testing or any other procedure under the Bill, shall follow such standards and procedures for quality assurance in the collection, storage, testing and analysis of DNA sample, establish and maintain such documentation and quality system, prepare and maintain quality manuals containing such details and share DNA data prepared and maintained by it with the National DNA Data Bank and the Regional DNA Data Banks, in such manner as may be specified by regulations.

Clause 18 of the Bill seeks to provide that every DNA laboratory shall appoint a person to be in-charge of the laboratory and employ such scientific, technical and other staff, possessing such qualifications and experience as may be specified by regulations, for discharging the duties and performing the functions under the Bill.

Clause 19 of the Bill seeks to provide that the in-charge of the DNA laboratory shall take such measures for facilitating skill upgradation and advancement in the knowledge of its employees in the field of DNA testing and other related fields, as may be specified by regulations, ensure that its employees undergo regular training in DNA related subjects, in such institutions, level and intervals, as may be specified by regulations and maintain such records relating to the laboratory and its personnel as may be specified by regulations.

Clause 20 of the Bill seeks to specify the various measures to be taken by DNA laboratory.

Clause 21 of the Bill seeks to prohibit taking of bodily substances from a person who is arrested for an offence (other than the specified offences) unless the consent is given in writing for the taking of the bodily substances.

Clause 22 of the Bill seeks to provide that any person who was present at the scene of a crime when it was committed; or is being questioned in connection with the investigation of a crime; or intends to find the whereabouts of his missing or lost relative, in disaster or otherwise, may voluntarily consent in writing to bodily substances being taken from him for DNA testing, subject to certain conditions specified therein.

Clause 23 of the Bill seeks to provide for the sources and manner of collection of samples for DNA testing.

Clause 24 of the Bill seeks to provide that if the trial court is satisfied with the plea of the accused person that the bodily substances taken from such person or collected from the place of occurrence of crime had been contaminated, the court may direct the taking of fresh bodily substances for re-examination.

Clause 25 of the Bill seeks to provide for the establishment of a National DNA Data Bank and such number of Regional DNA Data Banks for every State, or two or more States, as it may deem necessary. It further provides that the Regional DNA Data Banks shall share all DNA data stored and maintained by it with the National DNA Data Bank.

Clause 26 of the Bill seeks to provide that every DNA Data Bank shall maintain the indices for various categories of data and the information specified therein.

Clause 27 of the Bill seeks to provide for the appointment of a Director for the National DNA Data Bank and Directors for each Regional DNA Data Banks.

Clause 28 of the Bill seeks to provide for appointment of the officers and other employees of the National DNA Data Bank and the Regional DNA Data Banks, their salaries and allowances, terms and other conditions of service including the manner of appointment, of the Director of the National DNA Data Bank and the Director of each of the Regional DNA Data Banks.

Clause 29 of the Bill seeks to provide for the criteria and procedure to be followed by the National DNA Data Bank in comparing and communicating of DNA profile.

Clause 30 of the Bill seeks to provide for the manner of sharing of DNA profiles with foreign Government or organisation or institution or agencies. It further provides that the Central Government may, in consultation with the Board, determine the nature and extent of sharing DNA profiles in respect of offenders, suspects, under trials, missing persons and unknown deceased persons with the Government of a foreign State or an international organisation or an institution established by that Government or organisation, and seek similar information from such foreign State, organisation or institutions.

Clause 31 of the Bill seeks to provide for the manner of retention and removal of records in the DNA Data Bank.

Clause 32 of the Bill seeks to make provision for the security and confidentiality of Information. It requires the Board to ensure that the information relating to DNA profiles, DNA samples and any records thereof, forwarded to, or in custody of the National DNA Data Bank or the Regional DNA Data Banks or a DNA laboratory or any other person or authority under the Bill, are secured and kept confidential.

Clause 33 of the Bill seeks to provide all DNA data, including DNA profiles, DNA samples and records thereof, contained in any DNA laboratory and DNA Data Bank shall be used only for the purposes of facilitating identification of the person and not for any other purpose.

Clause 34 of the Bill seeks to provide for the access to information in certain cases.

Clause 35 of the Bill seeks to provide for the access to information for the sole purpose of operation, maintenance and training, in accordance with such terms and conditions as may be specified by regulations.

Clause 36 of the Bill seeks to provide for the access to information in DNA Data Bank for one time keyboard search by the person specified therein.

Clause 37 of the Bill seeks to provide for the restriction on access to information in crime scene index, in such manner as may be specified by regulations, if such information relates to a DNA profile derived from bodily substances of a victim of an offence which forms or formed the object of relevant investigation; or a person who has been eliminated as a suspect in the relevant investigation.

Clause 38 of the Bill seeks to provide for the prohibition on access to information in DNA Data Banks.

Clause 39 of the Bill seeks to provide for the grants to the Board by the Central Government.

Clause 40 of the Bill seeks to provide for the constitution of the DNA Regulatory Board Fund.

Clause 41 of the Bill seeks to provide for the preparation of the budget by the Board showing the estimated receipts and expenditure of the Board and forwarding the same to the Central Government.

Clause 42 of the Bill seeks to provide for the preparation of the annual report by the Board giving a full account of its activities during the previous financial year and submit a copy thereof to the Central Government.

Clause 43 of the Bill seeks to provide that the accounts and other relevant records of the Board shall be maintained in the form specified by the Central Government by notification and the same shall be audited by the Comptroller and Auditor-General of India.

Clause 44 of the Bill seeks to provide that the annual report and auditor's report of the Board shall be laid before each House of Parliament.

Clause 45 of the Bill seeks to specify the punishment for unauthorised disclosure of Information in DNA Data Bank. It provides that whoever, by virtue of his employment or official position or otherwise, has in his possession, or has access to, individually identifiable DNA information kept in the DNA laboratory or DNA Data Bank, wilfully discloses it in any manner to any person or agency not entitled to receive it under the Bill, or under any other law for the time being in force, shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to one lakh rupees.

Clause 46 of the Bill seeks to specify the punishment for obtaining information from DNA Data Bank without authorisation. It provides that whoever, without authorisation, wilfully obtains individually identifiable DNA information from the DNA laboratory or DNA Data Bank, shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to one lakh rupees.

Clause 47 of the Bill seeks to specify the punishment for using DNA sample or result without authorisation. It provides that whoever, without authorisation, wilfully uses any DNA sample or result of any DNA analysis, shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to one lakh rupees.

Clause 48 of the Bill seeks to specify the punishment for unlawful access of information in DNA Data Bank. It provides that whoever, accesses information stored in the DNA Data Bank, otherwise than in accordance with the provisions of the Bill, shall be punishable with imprisonment for a term which may extend to two years and also with fine which may extend to fifty thousand rupees.

Clause 49 of the Bill seeks to specify the punishment for destruction, alterations, contamination or tampering with biological evidence. It provides that whoever, knowingly and intentionally, destroys, alters, contaminates or tampers with biological evidence which is required to be preserved under any law for the time being in force, with the intention to

prevent that evidence from being subjected to DNA testing or to prevent the production or use of that evidence in a judicial proceeding, shall be punishable with imprisonment for a term which may extend to five years and also with fine which may extend to two lakh rupees.

Clause 50 of the Bill seeks to specify the punishment for contravention when no specific punishment is provided. It provides that whoever, contravenes any of the provisions of the Bill or the rules and regulations made thereunder for which no penalty is provided in the Bill, shall be punishable with imprisonment for a term which may extend to two years and also with fine which may extend to fifty thousand rupees.

Clause 51 of the Bill seeks to specify the punishment for offences by companies or institutions.

Clause 52 of the Bill seeks to provide that the Chairperson, Members and other officers of the Board, National DNA Data Bank and Regional DNA Data Banks shall be deemed, when acting or purporting to act in pursuance of any of the provisions of the Bill, to be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 53 of the Bill seeks to provide for the protection of action taken in good faith by any officer of the Central Government or Board or any Member or officer or other employee of the Board.

Clause 54 of the Bill seeks to empower the Central Government to supersede Board in the circumstances specified therein.

Clause 55 of the Bill seeks to empower the Central Government to issue directions.

Clause 56 of the Bill seeks to empower the Central Government to amend the Schedule.

Clause 57 of the Bill seeks to provide that no court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Board is empowered by or under the Bill to determine.

Clause 58 of the Bill seeks to empower the Central Government to make rules on matters enumerated therein.

Clause 59 of the Bill seeks to provide that the Board may, with the previous approval of the Central Government and after previous publication, by notification in the Official Gazette, make regulations consistent with the Bill and the rules made thereunder, to carry out the provisions of the Bill.

Clause 60 of the Bill seeks to provide that every rule and regulation made under the Bill shall be laid before each House of Parliament.

Clause 61 of the Bill seeks to empower the Central Government, by order published in the Official Gazette, to remove difficulties which may arise in giving effect to the provisions of the Bill within a period of two years from the date of enforcement of the Act. It further requires every such order to be laid before each House of Parliament.

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the establishment of a DNA Regulatory Board to exercise powers conferred on, and perform the functions assigned to it, under the proposed legislation.

2. Clause 25 of the Bill provides for the establishment of a National DNA Data Bank and Regional DNA Data Banks.

3. Clause 40 of the Bill provides for constitution of a Fund to be called the DNA Regulatory Board Fund, into which shall be credited grants and loans made to the Board, all sums received by the Board including fees or charges, or donations from such other source as may be decided by the Central Government and any income from investment of the amount of the Fund.

4. It is estimated that there would be an expenditure of approximately twenty crore rupees as non-recurring capital expenditure and a further recurring expenditure of five crore rupees per annum to carry out all the activities envisaged under the proposed legislation.

5. The Bill, if enacted and brought into operation, would not involve any other expenditure of a recurring or non-recurring nature from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 58 of the Bill empowers the Central Government to make rules with respect to the matters specified under sub-clause (2) which, *inter alia*, relate to (a) the allowances payable to the Chairperson and other *ex officio* Members and the pay and allowances of the Vice-Chairperson and the expert Member; (b) the salaries and allowances payable to, and the terms and other conditions of service of, officers and employees of the Board; (c) the manner in which the Board shall assist and co-operate in criminal investigation between various investigation agencies within the country and with any foreign State, international organisation or institution in dealing with DNA testing; (d) the manner of constitution of a selection committee and persons comprising the committee, for the appointment of a Director of National DNA Data Bank; (e) the salaries and allowances payable to, and the terms and other conditions of service including the manner of appointment, of the Director of the National DNA Data Bank and the Director of each of the Regional DNA Data Banks; (f) and the form for preparation of the annual report and the annual statement of accounts by the Board.

2. Clause 59 of the Bill empowers the Board to make regulations with the previous approval of the Central Government. The matters in respect of which the Board may make regulations, *inter alia*, relate to (a) the time and place of meeting of the Board and the procedure with regard to the transaction of business at its meetings; (b) the form, the fee and the manner in which an application for accreditation shall be made by a DNA laboratory; (c) onsite assessment requirements, standards and such other requirements to be complied by a DNA laboratory; (d) the obligations to be carried out by a DNA laboratory; (e) the educational qualifications and experience and other eligibility criteria in respect of person in-charge of a DNA laboratory, technical and managerial staff, and other employees of DNA laboratory; (f) the measures to be taken by DNA laboratories; (g) the format in which the National DNA Data Bank shall receive DNA data from Regional DNA Data Banks and store the DNA profiles; (h) the manner in which the DNA profile of a suspect or an under trial and of a person who is neither an offender nor a suspect shall be expunged; (i) the terms and conditions for access to information; and (j) the manner in which access to the information in the crime scene index shall be restricted.

3. Clause 60 of the Bill requires that the rules and regulations made under the proposed legislation be laid before each House of Parliament.

4. The matters in respect of which the rules or regulations may be made are matters of procedure and administrative detail, and as such, it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL No. 130 OF 2019

A Bill further to amend the Unlawful Activities (Prevention) Act, 1967.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Unlawful Activities (Prevention) Amendment Act, 2019. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

37 of 1967. **2.** In the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the principal Act), in section 2, in sub-section (1),— Amendment of section 2.

(i) in clause (d), for the word and figures "section 21", the word and figures "section 22" shall be substituted;

(ii) in clause (ha), for the words "the Schedule", the words "a Schedule" shall be substituted;

(iii) in clause (m), for the word "Schedule", the words "First Schedule" shall be substituted.

Amendment of section 25.

3. In section 25 of the principal Act, in sub-section (1), for the words "in which such property is situated, make an order", the words "in which such property is situated, or where the investigation is conducted by an officer of the National Investigation Agency, with the prior approval of the Director General of National Investigation Agency, make an order" shall be substituted.

Amendment of heading of Chapter VI.

4. In Chapter VI of the principal Act, for the Chapter heading, the following Chapter heading shall be substituted, namely:—

"TERRORIST ORGANISATIONS AND INDIVIDUALS".

Amendment of section 35.

5. In section 35 of the principal Act,—

(i) in sub-section (1),—

(A) in clause (a), after the words "First Schedule", the words "or the name of an individual in the Fourth Schedule" shall be inserted;

(B) in clause (b), after the words "United Nations", the words "or the name of an individual in the Fourth Schedule" shall be inserted;

(C) in clause (c), after the words "First Schedule", the words "or the name of an individual from the Fourth Schedule" shall be inserted;

(D) in clause (d), after the words "First Schedule", the words "or the Fourth Schedule" shall be inserted;

(ii) in sub-section (2), for the words "an organisation only if it believes that it is", the words "an organisation or an individual only if it believes that such organisation or individual is" shall be substituted;

(iii) in sub-section (3), for the words "an organisation shall be deemed to be involved in terrorism if it", the words "an organisation or an individual shall be deemed to be involved in terrorism if such organisation or individual" shall be substituted.

Amendment of section 36.

6. In section 36 of the principal Act,—

(i) in the marginal heading, for the words "a terrorist organisation", the words "terrorist organisation or individual" shall be substituted;

(ii) in sub-section (1), for the words "an organisation from the Schedule", the words "an organisation from the First Schedule, or as the case may be, the name of an individual from the Fourth Schedule" shall be substituted;

(iii) in sub-section (2),—

(A) in clause (b), for the words "Schedule as a terrorist organisation", the words "First Schedule as a terrorist organisation, or" shall be substituted;

(B) after clause (b), the following clause shall be inserted, namely:—

"(c) any person affected by inclusion of his name in the Fourth Schedule as a terrorist.";

(iv) in sub-section (5), for the words "an organisation from the Schedule", the words "an organisation from the First Schedule or the name of an individual from the Fourth Schedule" shall be substituted;

(v) in sub-section (6), after the words "an organisation", the words "or an individual" shall be inserted;

(vi) in sub-section (7), for the word "Schedule", the words "First Schedule or the name of an individual from the Fourth Schedule" shall be substituted.

7. In section 38 of the principal Act, in sub-section (1), in the proviso, in clause (b), for the word "Schedule", the words "First Schedule" shall be substituted.

Amendment of section 38.

8. In section 43 of the principal Act,—

Amendment of section 43.

(i) after clause (b), the following clause shall be inserted, namely:—

"(ba) in the case of National Investigation Agency, below the rank of Inspector;" ;

(ii) in clause (c), after the words, brackets and letter "or clause (b)", the words, brackets and letters "or clause (ba)" shall be inserted.

9. In section 45 of the principal Act, in sub-section (1), in clause (ii), for the word "where", the word "if" shall be substituted.

Amendment of section 45.

10. In the First Schedule to the principal Act, for the brackets, words, figures and letter "[See sections 2(1)(m) and 35]", the brackets, words, figures and letter "[See sections 2(1)(m), 35, 36 and 38 (1)]" shall be substituted.

Amendment of First Schedule.

11. In the Second Schedule to the principal Act,—

Amendment of Second Schedule.

(a) in item (v), the words "as amended from time to time" shall be inserted at the end;

(b) after item (ix), the following item shall be inserted, namely:—

"(x) International Convention for Suppression of Acts of Nuclear Terrorism (2005).".

12. After the Third Schedule to the principal Act, the following Schedule shall be added, namely:—

Addition of Fourth Schedule.

"THE FOURTH SCHEDULE

[See sections 35(1) and 36]

Sl. No.	Name of Individuals
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" .

STATEMENT OF OBJECTS AND REASONS

The Unlawful Activities (Prevention) Act, 1967 (the Act) was enacted to provide for more effective prevention of certain unlawful activities of individuals and associations, and for dealing with terrorist activities, and for matters connected therewith. The said Act has been amended in the years 2004, 2008 and 2013 to add certain provisions relating to various facets of terrorism.

2. Presently, the National Investigation Agency faces many difficulties in the process of investigation and prosecution of terrorism related cases. With a view to overcome such difficulties being faced by the National Investigation Agency in the investigation and prosecution of terrorism related cases due to certain legal infirmities and also to align the domestic law with the international obligations as mandated in several Conventions and Security Council Resolutions on the issue, the Government proposes to amend the said Act and for the said purpose, introduce the Unlawful Activities (Prevention) Amendment Bill, 2019.

3. The Unlawful Activities (Prevention) Amendment Bill, 2019, *inter alia*, provides for—

- (i) empowering the Director General, National Investigation Agency to grant approval of seizure or attachment of property when the case is investigated by the said agency;
- (ii) amending section 35 of the Act to empower the Central Government to add to or remove from the proposed Fourth Schedule, the name of an individual terrorist and other consequential amendments relating thereto;
- (iii) inserting a new clause (ba) in section 43 of the Act to empower an officer of the rank of Inspector of National Investigation Agency to investigate the offences under Chapter IV and Chapter VI.

4. The Bill seeks to achieve the above objectives.

NEW DELHI;

AMIT SHAH.

The 28th June, 2019.

BILL No. 129 OF 2019

A Bill to amend the National Investigation Agency Act, 2008.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

1. (I) This Act may be called the National Investigation Agency (Amendment) Act, 2019. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In the National Investigation Agency Act, 2008 (hereinafter referred to as the principal Act), in section 1, in sub-section (2),— Amendment of section 1.

(i) in clause (b), the word "and" occurring at the end, shall be omitted;

(ii) in clause (c), after the words "may be", the word "and" shall be inserted;

(iii) after clause (c), the following clause shall be inserted, namely:—

"(d) to persons who commit a Scheduled Offence beyond India against the Indian citizens or affecting the interest of India.".

Amendment
of section 2.

3. In section 2 of the principal Act, in sub-section (1), in clause (h), for the words "a Special Court constituted", the words "a Court of Session designated as Special Court" shall be substituted.

Amendment
of section 3.

4. In section 3 of the principal Act, in sub-section (2), after the word "India", the words "and, subject to any international treaty or domestic law of the concerned country, outside India," shall be inserted.

Amendment
of section 6.

5. In section 6 of the principal Act, after sub-section (7), the following sub-sections shall be inserted, namely:—

"(8) Where the Central Government is of the opinion that a Scheduled Offence has been committed at any place outside India to which this Act extends, it may direct the Agency to register the case and take up investigation as if such offence has been committed in India.

(9) For the purposes of sub-section (8), the Special Court at New Delhi shall have the jurisdiction."

Amendment
of section 11.

6. In section 11 of the principal Act,—

(i) in the marginal heading, for the word "constitute", the words "designate Court of Session as" shall be substituted;

(ii) in sub-section (1),—

(a) for the portion beginning with the words "The Central Government", and ending with the words "Special Courts", the words "The Central Government shall, in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, for the trial of Scheduled Offences, designate one or more Courts of Session as Special Court" shall be substituted;

(b) the following *Explanation* shall be inserted, namely:—

'Explanation.—For the purposes of this sub-section, the expression "High Court" means the High Court of the State in which a Court of Session to be designated as Special Court is functioning.';

(iii) sub-sections (3), (4), (5), (6) and (7) shall be omitted;

(iv) in sub-section (8),—

(a) for the words "by a person appointed as a Judge or an additional Judge of a Special Court", the words, brackets and figure "by the Sessions Judge of the Court of Session referred to in sub-section (1)" shall be substituted;

(b) for the words "such judge or additional judge and the Central Government", the words "judge of the Special Court and the appointing authority in consultation with the Central Government" shall be substituted;

(c) for the words "as may be specified in that order" occurring at the end, the words ",whichever is earlier" shall be substituted;

(v) for sub-section (9), the following sub-section shall be substituted, namely:—

"(9) When more than one Special Court is designated for an area or areas, the senior-most Judge shall distribute the business among them."

7. In section 22 of the principal Act,—

- (i) in the marginal heading, for the word "constitute", the words "designate Court of Session as" shall be substituted;
- (ii) in sub-section (1), for the words "constitute one or more", the words "designate one or more Courts of Session as" shall be substituted;
- (iii) in sub-sections (2), (3) and (4), for the word "constituted" wherever it occurs, the word "designated" shall be substituted.

8. In the Schedule to the principal Act,—

- (i) for serial number 1 and the entry relating thereto, the following serial numbers and entries shall be substituted, namely:—

"1. The Explosive Substances Act, 1908 (6 of 1908);

1A. The Atomic Energy Act, 1962 (33 of 1962);";

- (ii) in serial number 3, for the figures, brackets and word "1982 (65 of 1982)", the figures, brackets and word "2016 (30 of 2016)" shall be substituted;

- (iii) in serial number 8, for entry (b), the following entries shall be substituted, namely:—

"(b) Sections 370 and 370A of Chapter XVI of the Indian Penal Code (45 of 1860);

(c) Sections 489-A to 489-E (both inclusive) of the Indian Penal Code (45 of 1860);

(d) Sub-section (IAA) of section 25 of Chapter V of the Arms Act, 1959 (54 of 1959);

(e) Section 66F of Chapter XI of the Information Technology Act, 2000 (21 of 2000).".

Amendment
of section 22.

Amendment
of Schedule.

STATEMENT OF OBJECTS AND REASONS

The National Investigation Agency Act, 2008 (the Act) was enacted with a view to constitute an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India, security of State, friendly relations with foreign States and offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organisations.

2. In order to facilitate the speedy investigation and prosecution of Scheduled Offences, including those committed outside India against the Indian citizens or affecting the interest of India and to insert certain new offences in the Schedule to the Act as Scheduled Offences which adversely affect the national security, it has become necessary to amend certain provisions of the Act.

3. The National Investigation Agency (Amendment) Bill, 2019, *inter alia*, provides for the following, namely:—

(i) to insert a new clause (*d*) in sub-section (2) of section 1 of the Act so as to apply the provisions of the Act also to persons who commit a Scheduled Offence beyond India against the Indian citizens or affecting the interest of India;

(ii) to amend sub-section (2) of section 3 of the Act to provide that the officers of the National Investigation Agency shall have the similar powers, duties, privileges and liabilities, being exercised by the police officers in connection with the investigation of offences, not only in India but also outside India;

(iii) to amend section 6 of the Act so as to empower the Central Government, with respect to a Scheduled Offence committed outside India, to direct the Agency to register the case and take up investigation as if such offence has taken place in India;

(iv) to amend sections 11 and 22 of the Act so as to provide that the Central Government and the State Governments may designate one or more Courts of Session as Special Court or Special Courts for conducting the trial of offences under the Act; and

(v) to amend Schedule of the Act so as to insert certain new offences in the said Schedule.

4. The Bill seeks to achieve the above objectives.

NEW DELHI;

The 28th June, 2019.

AMIT SHAH.

BILL NO. 131 OF 2019

A Bill further to amend the Protection of Human Rights Act, 1993.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Protection of Human Rights (Amendment) Act, 2019.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

10 of 1994.

2. In the Protection of Human Rights Act, 1993 (hereinafter referred to as the principal Act), in section 2, in sub-section (1),—

Amendment of section 2.

(i) after clause (b), the following clause shall be inserted, namely:—

49 of 2016.
‘(ba) “Chief Commissioner” means the Chief Commissioner for Persons with Disabilities referred to in sub-section (1) of section 74 of the Rights of Persons with Disabilities Act, 2016;’;

(ii) after clause (g), the following clause shall be inserted, namely:—

27 of 1993.
‘(ga) “National Commission for Backward Classes” means the National Commission for Backward Classes constituted under section 3 of the National Commission for Backward Classes Act, 1993;’;

(iii) after clause (h), the following clause shall be inserted, namely:—

'(ha) "National Commission for Protection of Child Rights" means the National Commission for Protection of Child Rights constituted under section 3 of the Commissions for Protection of Child Rights Act, 2005;'

Amendment
of section 3.

3. In section 3 of the principal Act,—

4 of 2006

(a) in sub-section (2),—

(i) in clause (a), for the words "Chief Justice", the words "Chief Justice of India or a Judge" shall be substituted;

(ii) in clause (d), for the words "two Members", the words "three Members, out of which at least one shall be a woman," shall be substituted;

(b) in sub-section (3),—

(i) for the words "the National Commission for Minorities", the words "the National Commission for Backward Classes, the National Commission for Minorities, the National Commission for Protection of Child Rights" shall be substituted;

(ii) for the words "and the National Commission for Women", the words "the National Commission for Women and the Chief Commissioner for Persons with Disabilities" shall be substituted;

(c) in sub-section (4), for the portion beginning with "shall exercise such powers and discharge such functions" and ending with "as the case may be", the following shall be substituted, namely:—

"shall, subject to control of the Chairperson, exercise all administrative and financial powers (except judicial functions and the power to make regulations under section 40B).".

Amendment
of section 6.

4. In section 6 of the principal Act,—

(i) in sub-section (1),—

(a) for the words "five years", the words "three years" shall be substituted;

(b) after the words "whichever is earlier" occurring at the end, the words "and shall be eligible for re-appointment" shall be inserted;

(ii) in sub-section (2),—

(a) for the words "five years", the words "three years" shall be substituted;

(b) the words "for another term of five years" shall be omitted.

Amendment
of section 21.

5. In section 21 of the principal Act,—

(i) in sub-section (2), in clause (a), for the words "Chief Justice", the words "Chief Justice or a Judge" shall be substituted;

(ii) in sub-section (3), for the words "shall exercise such powers and discharge such functions of the State Commission as it may delegate to him", the words "shall, subject to control of the Chairperson, exercise all administrative and financial powers of the State Commission" shall be substituted;

(iii) after sub-section (6), the following sub-sections shall be inserted, namely:—

"(7) Subject to the provisions of section 12, the Central Government may, by order, confer upon the State Commission the functions relating to human rights being discharged by the Union territories, other than the Union territory of Delhi.

(8) The functions relating to human rights in case of Union territory of Delhi shall be dealt with by the Commission.”.

6. In section 24 of the principal Act,—

Amendment
of section 24.

(i) in sub-section (1),—

(a) for the words “five years”, the words “three years” shall be substituted;

(b) after the words “whichever is earlier” occurring at the end, the words “and shall be eligible for re-appointment” shall be inserted;

(ii) in sub-section (2),—

(a) for the words “five years”, the words “three years” shall be substituted;

(b) the words “for another term of five years” occurring at the end, shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Protection of Human Rights Act, 1993 (the Act) was enacted to provide for the constitution of a National Human Rights Commission (the Commission), the State Human Rights Commission (the State Commission) and the Human Rights Courts for protection of human rights.

2. The National Human Rights Commission has proposed certain amendments to the Act to address the concerns raised by the Sub-Committee on Accreditation of the Global Alliance of National Human Rights Institutions on the re-accreditation status of the said Commission. Besides this, certain State Governments have also proposed for amendment of the Act, as they have been facing difficulties in finding suitable candidates to the post of Chairperson of the respective State Commissions owing to the existing eligibility criteria to the said post.

3. In view of the above, it has become necessary to amend certain provisions of the said Act. The proposed amendments will enable both the Commission as well as the State Commissions to be more compliant with the Paris Principles concerning its autonomy, independence, pluralism and wide-ranging functions in order to effectively protect and promote human rights.

4. The Protection of Human Rights (Amendment) Bill, 2019, *inter alia*, provides for—

(i) amendment of clause (a) of sub-section (2) of section 3 of the Act so as to provide that a person who has been a Judge of the Supreme Court is also made eligible to be appointed as Chairperson of the Commission in addition to the person who has been the Chief Justice of India;

(ii) amendment of clause (d) of sub-section (2) of section 3 of the Act to increase the Members of the Commission from two to three of which, one shall be a woman;

(iii) amendment of sub-section (3) of section 3 of the Act so as to include Chairperson of the National Commission for Backward Classes, Chairperson of the National Commission for Protection of Child Rights and the Chief Commissioner for Persons with Disabilities as deemed Members of the Commission;

(iv) amendment of sub-sections (1) and (2) of section 6 and sub-sections (1) and (2) of section 24 of the Act so as to reduce the term of the Chairperson and Members of the Commission and the State Commissions from five to three years and shall be eligible for re-appointment;

(v) amendment of section 21 of the Act so as to provide that a person who has been a Judge of a High Court is also made eligible to be appointed as Chairperson of the State Commission in addition to the person who has been the Chief Justice of the High Court; and

(vi) insertion of new sub-sections (7) and (8) in section 21 of the Act so as to confer upon State Commissions the functions relating to human rights being discharged by the Union territories, other than the Union territory of Delhi, which will be dealt with by the Commission.

5. The Bill seeks to achieve the above objectives.

NEW DELHI;

The 27th June, 2019.

AMIT SHAH.

FINANCIAL MEMORANDUM

Item (*ii*) of sub-clause (*a*) of clause 3 of the Bill provides for increasing one Member of the National Human Rights Commission. In addition to this, for the office of Member, one post each of Principal Private Secretary, Personal Assistant, Staff Car Driver and three posts of Multi-Tasking Staff would be created. The expenditure during the initial year for the creation of one post of Member along with the staff for the office of such Member is estimated to be approximately two crore rupees which will mainly be of a recurring nature.

2. The Bill does not involve any other expenditure of a recurring or non-recurring nature.

BILL No. 144 OF 2019

A Bill to provide for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effective administration and settlement of consumers' disputes and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

CHAPTER I**PRELIMINARY**

Short title,
extent,
commencement
and
application.

1. (1) This Act may be called the Consumer Protection Act, 2019.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different States and for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

(4) Save as otherwise expressly provided by the Central Government, by notification, this Act shall apply to all goods and services.

2. In this Act, unless the context otherwise requires,—

Definitions.

(1) "advertisement" means any audio or visual publicity, representation, endorsement or pronouncement made by means of light, sound, smoke, gas, print, electronic media, internet or website and includes any notice, circular, label, wrapper, invoice or such other documents;

(2) "appropriate laboratory" means a laboratory or an organisation—

(i) recognised by the Central Government; or

(ii) recognised by a State Government, subject to such guidelines as may be issued by the Central Government in this behalf; or

(iii) established by or under any law for the time being in force, which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect;

(3) "branch office" means—

(i) any office or place of work described as a branch by the establishment; or

(ii) any establishment carrying on either the same or substantially the same activity carried on by the head office of the establishment;

(4) "Central Authority" means the Central Consumer Protection Authority established under section 10;

(5) "complainant" means—

(i) a consumer; or

(ii) any voluntary consumer association registered under any law for the time being in force; or

(iii) the Central Government or any State Government; or

(iv) the Central Authority; or

(v) one or more consumers, where there are numerous consumers having the same interest; or

(vi) in case of death of a consumer, his legal heir or legal representative; or

(vii) in case of a consumer being a minor, his parent or legal guardian.

(6) "complaint" means any allegation in writing, made by a complainant for obtaining any relief provided by or under this Act, that—

(i) an unfair contract or unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;

(ii) the goods bought by him or agreed to be bought by him suffer from one or more defects;

(iii) the services hired or availed of or agreed to be hired or availed of by him suffer from any deficiency;

(iv) a trader or a service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price—

(a) fixed by or under any law for the time being in force; or

(b) displayed on the goods or any package containing such goods; or

(c) displayed on the price list exhibited by him by or under any law for the time being in force; or

(d) agreed between the parties;

(v) the goods, which are hazardous to life and safety when used, are being offered for sale to the public—

(a) in contravention of standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;

(b) where the trader knows that the goods so offered are unsafe to the public;

(vi) the services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by a person who provides any service and who knows it to be injurious to life and safety;

(vii) a claim for product liability action lies against the product manufacturer, product seller or product service provider, as the case may be;

(7) "consumer" means any person who—

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.

Explanation.—For the purposes of this clause,—

(a) the expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;

(b) the expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing;

(8) "consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint;

(9) "consumer rights" includes,—

(i) the right to be protected against the marketing of goods, products or services which are hazardous to life and property;

(ii) the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, so as to protect the consumer against unfair trade practices;

(iii) the right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices;

(iv) the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate fora;

(v) the right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers; and

(vi) the right to consumer awareness;

(10) "defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods or product and the expression "defective" shall be construed accordingly;

(II) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes—

(i) any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and

(ii) deliberate withholding of relevant information by such person to the consumer;

(12) "design", in relation to a product, means the intended or known physical and material characteristics of such product and includes any intended or known formulation or content of such product and the usual result of the intended manufacturing or other process used to produce such product;

(13) "direct selling" means marketing, distribution and sale of goods or provision of services through a network of sellers, other than through a permanent retail location;

(14) "Director-General" means the Director-General appointed under sub-section (2) of section 15;

(15) "District Commission" means a District Consumer Disputes Redressal Commission established under sub-section (I) of section 28;

(16) "e-commerce" means buying or selling of goods or services including digital products over digital or electronic network;

(17) "electronic service provider" means a person who provides technologies or processes to enable a product seller to engage in advertising or selling goods or services to a consumer and includes any online market place or online auction sites;

(18) "endorsement", in relation to an advertisement, means—

(i) any message, verbal statement, demonstration; or

(ii) depiction of the name, signature, likeness or other identifiable personal characteristics of an individual; or

(iii) depiction of the name or seal of any institution or organisation,

which makes the consumer to believe that it reflects the opinion, finding or experience of the person making such endorsement;

(19) "establishment" includes an advertising agency, commission agent, manufacturing, trading or any other commercial agency which carries on any business, trade or profession or any work in connection with or incidental or ancillary to any

commercial activity, trade or profession, or such other class or classes of persons including public utility entities in the manner as may be prescribed;

(20) "express warranty" means any material statement, affirmation of fact, promise or description relating to a product or service warranting that it conforms to such material statement, affirmation, promise or description and includes any sample or model of a product warranting that the whole of such product conforms to such sample or model;

(21) "goods" means every kind of movable property and includes "food" as defined in clause (j) of sub-section (I) of section 3 of the Food Safety and Standards Act, 2006;

34 of 2006.

(22) "harm", in relation to a product liability, includes—

(i) damage to any property, other than the product itself;

(ii) personal injury, illness or death;

(iii) mental agony or emotional distress attendant to personal injury or illness or damage to property; or

(iv) any loss of consortium or services or other loss resulting from a harm referred to in sub-clause (i) or sub-clause (ii) or sub-clause (iii),

but shall not include any harm caused to a product itself or any damage to the property on account of breach of warranty conditions or any commercial or economic loss, including any direct, incidental or consequential loss relating thereto;

(23) "injury" means any harm whatever illegally caused to any person, in body, mind or property;

(24) "manufacturer" means a person who—

(i) makes any goods or parts thereof; or

(ii) assembles any goods or parts thereof made by others; or

(iii) puts or causes to be put his own mark on any goods made by any other person;

(25) "mediation" means the process by which a mediator mediates the consumer disputes;

(26) "mediator" means a mediator referred to in section 75;

(27) "member" includes the President and a member of the National Commission or a State Commission or a District Commission, as the case may be;

(28) "misleading advertisement" in relation to any product or service, means an advertisement, which—

(i) falsely describes such product or service; or

(ii) gives a false guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or

(iii) conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or

(iv) deliberately conceals important information;

(29) "National Commission" means the National Consumer Disputes Redressal Commission established under sub-section (I) of section 53;

(30) "notification" means a notification published in the Official Gazette and the term "notify" shall be construed accordingly;

(31) "person" includes—

- (i) an individual;
- (ii) a firm whether registered or not;
- (iii) a Hindu undivided family;
- (iv) a co-operative society;

21 of 1860.
(v) an association of persons whether registered under the Societies Registration Act, 1860 or not;

(vi) any corporation, company or a body of individuals whether incorporated or not;

(vii) any artificial juridical person, not falling within any of the preceding sub-clauses;

(32) "prescribed" means prescribed by rules made by the Central Government, or, as the case may be, the State Government;

(33) "product" means any article or goods or substance or raw material or any extended cycle of such product, which may be in gaseous, liquid, or solid state possessing intrinsic value which is capable of delivery either as wholly assembled or as a component part and is produced for introduction to trade or commerce, but does not include human tissues, blood, blood products and organs;

(34) "product liability" means the responsibility of a product manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating thereto;

(35) "product liability action" means a complaint filed by a person before a District Commission or State Commission or National Commission, as the case may be, for claiming compensation for the harm caused to him;

(36) "product manufacturer" means a person who—

- (i) makes any product or parts thereof; or
- (ii) assembles parts thereof made by others; or
- (iii) puts or causes to be put his own mark on any products made by any other person; or
- (iv) makes a product and sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains such product or is otherwise involved in placing such product for commercial purpose; or
- (v) designs, produces, fabricates, constructs or re-manufactures any product before its sale; or
- (vi) being a product seller of a product, is also a manufacturer of such product;

(37) "product seller", in relation to a product, means a person who, in the course of business, imports, sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains, or otherwise is involved in placing such product for commercial purpose and includes—

- (i) a manufacturer who is also a product seller; or

(ii) a service provider,

but does not include—

(a) a seller of immovable property, unless such person is engaged in the sale of constructed house or in the construction of homes or flats;

(b) a provider of professional services in any transaction in which, the sale or use of a product is only incidental thereto, but furnishing of opinion, skill or services being the essence of such transaction;

(c) a person who—

(I) acts only in a financial capacity with respect to the sale of the product;

(II) is not a manufacturer, wholesaler, distributor, retailer, direct seller or an electronic service provider;

(III) leases a product, without having a reasonable opportunity to inspect and discover defects in the product, under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor;

(38) "product service provider", in relation to a product, means a person who provides any service in respect of such product;

(39) "regulations" means the regulations made by the National Commission, or as the case may be, the Central Authority;

(40) "Regulator" means a body or any authority established under any other law for the time being in force;

(41) "restrictive trade practice" means a trade practice which tends to bring about manipulation of price or its conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions and shall include—

(i) delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price;

(ii) any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as condition precedent for buying, hiring or availing of other goods or services;

(42) "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

(43) "spurious goods" means such goods which are falsely claimed to be genuine;

(44) "State Commission" means a State Consumer Disputes Redressal Commission established under sub-section (1) of section 42;

(45) "trader", in relation to any goods, means a person who sells or distributes any goods for sale and includes the manufacturer thereof, and where such goods are sold or distributed in package form, includes the packer thereof;

(46) "unfair contract" means a contract between a manufacturer or trader or service provider on one hand, and a consumer on the other, having such terms which

cause significant change in the rights of such consumer, including the following, namely:—

- (i) requiring manifestly excessive security deposits to be given by a consumer for the performance of contractual obligations; or
- (ii) imposing any penalty on the consumer, for the breach of contract thereof which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract; or
- (iii) refusing to accept early repayment of debts on payment of applicable penalty; or
- (iv) entitling a party to the contract to terminate such contract unilaterally, without reasonable cause; or
- (v) permitting or has the effect of permitting one party to assign the contract to the detriment of the other party who is a consumer, without his consent; or
- (vi) imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage;

(47) "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:—

- (i) making any statement, whether orally or in writing or by visible representation including by means of electronic record, which—
 - (a) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
 - (b) falsely represents that the services are of a particular standard, quality or grade;
 - (c) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;
 - (d) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;
 - (e) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;
 - (f) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;
 - (g) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof;

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

(h) makes to the public a representation in a form that purports to be—

- (A) a warranty or guarantee of a product or of any goods or services; or
- (B) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result,

if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

(i) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;

(j) gives false or misleading facts disparaging the goods, services or trade of another person.

Explanation.—For the purposes of this sub-clause, a statement that is,—

(A) expressed on an article offered or displayed for sale, or on its wrapper or container; or

(B) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or

(C) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public,

shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;

(ii) permitting the publication of any advertisement, whether in any newspaper or otherwise, including by way of electronic record, for the sale or supply at a bargain price of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

Explanation.—For the purpose of this sub-clause, "bargain price" means,—

(A) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise; or

(B) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;

(iii) permitting—

(a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged, in the transaction as a whole;

(b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest, except such contest, lottery, game of chance or skill as may be prescribed;

(c) withholding from the participants of any scheme offering gifts, prizes or other items free of charge on its closure, the information about final results of the scheme.

Explanation.—For the purpose of this sub-clause, the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time published, prominently in the same newspaper in which the scheme was originally advertised;

(iv) permitting the sale or supply of goods intended to be used, or are of a kind likely to be used by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by the competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;

(v) permitting the hoarding or destruction of goods, or refusal to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services;

(vi) manufacturing of spurious goods or offering such goods for sale or adopting deceptive practices in the provision of services;

(vii) not issuing bill or cash memo or receipt for the goods sold or services rendered in such manner as may be prescribed;

(viii) refusing, after selling goods or rendering services, to take back or withdraw defective goods or to withdraw or discontinue deficient services and to refund the consideration thereof, if paid, within the period stipulated in the bill or cash memo or receipt or in the absence of such stipulation, within a period of thirty days;

(ix) disclosing to other person any personal information given in confidence by the consumer unless such disclosure is made in accordance with the provisions of any law for the time being in force.

CHAPTER II

CONSUMER PROTECTION COUNCILS

3. (1) The Central Government shall, by notification, establish with effect from such date as it may specify in that notification, the Central Consumer Protection Council to be known as the Central Council.

Central
Consumer
Protection
Council.

(2) The Central Council shall be an advisory council and consist of the following members, namely:—

(a) the Minister-in-charge of the Department of Consumer Affairs in the Central Government, who shall be the Chairperson; and

(b) such number of other official or non-official members representing such interests as may be prescribed.

4. (1) The Central Council shall meet as and when necessary, but at least one meeting of the Council shall be held every year.

Procedure for
meetings of
Central
Council.

(2) The Central Council shall meet at such time and place as the Chairperson may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed.

5. The objects of the Central Council shall be to render advice on promotion and protection of the consumers' rights under this Act.

Objects of
Central
Council.

State
Consumer
Protection
Councils.

6. (1) Every State Government shall, by notification, establish with effect from such date as it may specify in such notification, a State Consumer Protection Council for such State to be known as the State Council.

(2) The State Council shall be an advisory council and consist of the following members, namely:—

(a) the Minister-in-charge of Consumer Affairs in the State Government who shall be the Chairperson;

(b) such number of other official or non-official members representing such interests as may be prescribed;

(c) such number of other official or non-official members, not exceeding ten, as may be nominated by the Central Government.

(3) The State Council shall meet as and when necessary but not less than two meetings shall be held every year.

(4) The State Council shall meet at such time and place as the Chairperson may think fit and shall observe such procedure in regard to the transaction of its business, as may be prescribed.

Objects of
State Council.

7. The objects of every State Council shall be to render advice on promotion and protection of consumer rights under this Act within the State.

District
Consumer
Protection
Council.

8. (1) The State Government shall, by notification, establish for every District with effect from such date as it may specify in such notification, a District Consumer Protection Council to be known as the District Council.

(2) The District Council shall be an advisory council and consist of the following members, namely:—

(a) the Collector of the district (by whatever name called), who shall be the Chairperson; and

(b) such number of other official and non-official members representing such interests as may be prescribed.

(3) The District Council shall meet as and when necessary but not less than two meetings shall be held every year.

(4) The District Council shall meet at such time and place within the district as the Chairperson may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed.

Objects of
District
Council.

9. The objects of every District Council shall be to render advice on promotion and protection of consumer rights under this Act within the district.

CHAPTER III

CENTRAL CONSUMER PROTECTION AUTHORITY

Establishment
of Central
Consumer
Protection
Authority.

10. (1) The Central Government shall, by notification, establish with effect from such date as it may specify in that notification, a Central Consumer Protection Authority to be known as the Central Authority to regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of public and consumers and to promote, protect and enforce the rights of consumers as a class.

(2) The Central Authority shall consist of a Chief Commissioner and such number of other Commissioners as may be prescribed, to be appointed by the Central Government to exercise the powers and discharge the functions under this Act.

(3) The headquarters of the Central Authority shall be at such place in the National Capital Region of Delhi, and it shall have regional and other offices in any other place in India as the Central Government may decide.

11. The Central Government may, by notification, make rules to provide for the qualifications for appointment, method of recruitment, procedure for appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of the service of the Chief Commissioner and Commissioners of the Central Authority.

Qualifications,
method of
recruitment,
etc., of Chief
Commissioner
and
Commissioners.

12. No act or proceeding of the Central Authority shall be invalid merely by reason of—

- (a) any vacancy in, or any defect in the constitution of, the Central Authority; or
- (b) any defect in the appointment of a person acting as the Chief Commissioner or as a Commissioner; or
- (c) any irregularity in the procedure of the Central Authority not affecting the merits of the case.

Vacancy, etc.,
not to
invalidate
proceedings
of Central
Authority.

13. (1) The Central Government shall provide the Central Authority such number of officers and other employees as it considers necessary for the efficient performance of its functions under this Act.

Appointment
of officers,
experts,
professionals
and other
employees of
Central
Authority.

(2) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Central Authority appointed under this Act shall be such as may be prescribed.

(3) The Central Authority may engage, in accordance with the procedure specified by regulations, such number of experts and professionals of integrity and ability, who have special knowledge and experience in the areas of consumer rights and welfare, consumer policy, law, medicine, food safety, health, engineering, product safety, commerce, economics, public affairs or administration, as it deems necessary to assist it in the discharge of its functions under this Act.

Procedure of
Central
Authority.

14. (1) The Central Authority shall regulate the procedure for transaction of its business and allocation of its business amongst the Chief Commissioner and Commissioners as may be specified by regulations.

(2) The Chief Commissioner shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Central Authority:

Provided that the Chief Commissioner may delegate such of his powers relating to administrative matters of the Central Authority, as he may think fit, to any Commissioner (including Commissioner of a regional office) or any other officer of the Central Authority.

Investigation
Wing.

15. (1) The Central Authority shall have an Investigation Wing headed by a Director-General for the purpose of conducting inquiry or investigation under this Act as may be directed by the Central Authority.

(2) The Central Government may appoint a Director-General and such number of Additional Director-General, Director, Joint Director, Deputy Director and Assistant Director, from amongst persons who have experience in investigation and possess such qualifications, in such manner, as may be prescribed.

(3) Every Additional Director-General, Director, Joint Director, Deputy Director and Assistant Director shall exercise his powers, and discharge his functions, subject to the general control, supervision and direction of the Director-General.

(4) The Director General may delegate all or any of his powers to the Additional Director-General or Director, Joint Director or Deputy Director or Assistant Director, as the case may be, while conducting inquiries or investigations under this Act.

(5) The inquiries or the investigations made by the Director General shall be submitted to the Central Authority in such form, in such manner and within such time, as may be specified by regulations.

Power of District Collector.

16. The District Collector (by whatever name called) may, on a complaint or on a reference made to him by the Central Authority or the Commissioner of a regional office, inquire into or investigate complaints regarding violation of rights of consumers as a class, on matters relating to violations of consumer rights, unfair trade practices and false or misleading advertisements, within his jurisdiction and submit his report to the Central Authority or to the Commissioner of a regional office, as the case may be.

Complaints to authorities.

17. A complaint relating to violation of consumer rights or unfair trade practices or false or misleading advertisements which are prejudicial to the interests of consumers as a class, may be forwarded either in writing or in electronic mode, to any one of the authorities, namely, the District Collector or the Commissioner of regional office or the Central Authority.

Powers and functions of Central Authority.

18. (1) The Central Authority shall—

(a) protect, promote and enforce the rights of consumers as a class, and prevent violation of consumers rights under this Act;

(b) prevent unfair trade practices and ensure that no person engages himself in unfair trade practices;

(c) ensure that no false or misleading advertisement is made of any goods or services which contravenes the provisions of this Act or the rules or regulations made thereunder;

(d) ensure that no person takes part in the publication of any advertisement which is false or misleading.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the Central Authority may, for any of the purposes aforesaid,—

(a) inquire or cause an inquiry or investigation to be made into violations of consumer rights or unfair trade practices, either *suo motu* or on a complaint received or on the directions from the Central Government;

(b) file complaints before the District Commission, the State Commission or the National Commission, as the case may be, under this Act;

(c) intervene in any proceedings before the District Commission or the State Commission or the National Commission, as the case may be, in respect of any allegation of violation of consumer rights or unfair trade practices;

(d) review the matters relating to, and the factors inhibiting enjoyment of, consumer rights, including safeguards provided for the protection of consumers under any other law for the time being in force and recommend appropriate remedial measures for their effective implementation;

(e) recommend adoption of international covenants and best international practices on consumer rights to ensure effective enforcement of consumer rights;

(f) undertake and promote research in the field of consumer rights;

(g) spread and promote awareness on consumer rights;

(h) encourage non-Governmental organisations and other institutions working in the field of consumer rights to co-operate and work with consumer protection agencies;

(i) mandate the use of unique and universal goods identifiers in such goods, as may be necessary, to prevent unfair trade practices and to protect consumers' interest;

- (j) issue safety notices to alert consumers against dangerous or hazardous or unsafe goods or services;
- (k) advise the Ministries and Departments of the Central and State Governments on consumer welfare measures;
- (l) issue necessary guidelines to prevent unfair trade practices and protect consumers' interest.

19. (1) The Central Authority may, after receiving any information or complaint or directions from the Central Government or of its own motion, conduct or cause to be conducted a preliminary inquiry as to whether there exists a *prima facie* case of violation of consumer rights or any unfair trade practice or any false or misleading advertisement, by any person, which is prejudicial to the public interest or to the interests of consumers and if it is satisfied that there exists a *prima facie* case, it shall cause investigation to be made by the Director-General or by the District Collector.

Power of
Central
Authority to
refer matter
for
investigation
or to other
Regulator.

(2) Where, after preliminary inquiry, the Central Authority is of the opinion that the matter is to be dealt with by a Regulator established under any other law for the time being in force, it may refer such matter to the concerned Regulator along with its report.

(3) For the purposes of investigation under sub-section (1), the Central Authority, the Director General or the District Collector may call upon a person referred to in sub-section (1) and also direct him to produce any document or record in his possession.

20. Where the Central Authority is satisfied on the basis of investigation that there is sufficient evidence to show violation of consumer rights or unfair trade practice by a person, it may pass such order as may be necessary, including—

Power of
Central
Authority to
recall goods,
etc.

(a) recalling of goods or withdrawal of services which are dangerous, hazardous or unsafe;

(b) reimbursement of the prices of goods or services so recalled to purchasers of such goods or services; and

(c) discontinuation of practices which are unfair and prejudicial to consumers' interest:

Provided that the Central Authority shall give the person an opportunity of being heard before passing an order under this section.

21. (1) Where the Central Authority is satisfied after investigation that any advertisement is false or misleading and is prejudicial to the interest of any consumer or is in contravention of consumer rights, it may, by order, issue directions to the concerned trader or manufacturer or endorser or advertiser or publisher, as the case may be, to discontinue such advertisement or to modify the same in such manner and within such time as may be specified in that order.

Power of
Central
Authority to
issue
directions and
penalties
against false
or misleading
advertisements.

(2) Notwithstanding the order passed under sub-section (1), if the Central Authority is of the opinion that it is necessary to impose a penalty in respect of such false or misleading advertisement, by a manufacturer or an endorser, it may, by order, impose on manufacturer or endorser a penalty which may extend to ten lakh rupees:

Provided that the Central Authority may, for every subsequent contravention by a manufacturer or endorser, impose a penalty, which may extend to fifty lakh rupees.

(3) Notwithstanding any order under sub-sections (1) and (2), where the Central Authority deems it necessary, it may, by order, prohibit the endorser of a false or misleading advertisement from making endorsement of any product or service for a period which may extend to one year:

Provided that the Central Authority may, for every subsequent contravention, prohibit such endorser from making endorsement in respect of any product or service for a period which may extend to three years.

(4) Where the Central Authority is satisfied after investigation that any person is found to publish, or is a party to the publication of, a misleading advertisement, it may impose on such person a penalty which may extend to ten lakh rupees.

(5) No endorser shall be liable to a penalty under sub-sections (2) and (3) if he has exercised due diligence to verify the veracity of the claims made in the advertisement regarding the product or service being endorsed by him.

(6) No person shall be liable to such penalty if he proves that he had published or arranged for the publication of such advertisement in the ordinary course of his business:

Provided that no such defence shall be available to such person if he had previous knowledge of the order passed by the Central Authority for withdrawal or modification of such advertisement.

(7) While determining the penalty under this section, regard shall be had to the following, namely:—

- (a) the population and the area impacted or affected by such offence;
- (b) the frequency and duration of such offence;
- (c) the vulnerability of the class of persons likely to be adversely affected by such offence; and
- (d) the gross revenue from the sales effected by virtue of such offence.

(8) The Central Authority shall give the person an opportunity of being heard before an order under this section is passed.

Search and seizure.

22. (1) For the purpose of conducting an investigation after preliminary inquiry under sub-section (1) of section 19, the Director-General or any other officer authorised by him in this behalf, or the District Collector, as the case may be, may, if he has any reason to believe that any person has violated any consumer rights or committed unfair trade practice or causes any false or misleading advertisement to be made, shall,—

- (a) enter at any reasonable time into any such premises and search for any document or record or article or any other form of evidence and seize such document, record, article or such evidence;
- (b) make a note or an inventory of such record or article; or
- (c) require any person to produce any record, register or other document or article.

(2) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, for search and seizure under this Act.

2 of 1974.

(3) Every document, record or article seized under clause (a) of sub-section (1) or produced under clause (c) of that sub-section shall be returned to the person, from whom they were seized or who produced the same, within a period of twenty days of the date of such seizure or production, as the case may be, after copies thereof or extracts therefrom certified by that person, in such manner as may be prescribed, have been taken.

(4) Where any article seized under sub-section (1) are subject to speedy or natural decay, the Director-General or such other officer may dispose of the article in such manner as may be prescribed.

(5) In the case of articles other than the articles referred to in sub-section (4), provisions contained in clause (c) of sub-section (2) of section 38 shall *mutatis mutandis* apply in relation to analysis or tests.

23. The Central Government may, if it considers necessary, by notification, designate any statutory authority or body to exercise the powers and perform the functions of the Central Authority referred to in section 10.

Designation
of any
statutory
authority or
body to
function as
Central
Authority.

24. A person aggrieved by any order passed by the Central Authority under sections 20 and 21 may file an appeal to the National Commission within a period of thirty days from the date of receipt of such order.

Appeal.

25. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Central Authority grants of such sums of money as that Government may think fit for being utilised for the purposes of this Act.

Grants by
Central
Government.

26. (1) The Central Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form and manner as may be prescribed in consultation with the Comptroller and Auditor-General of India.

Accounts and
audit.

(2) The accounts of the Central Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Central Authority to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India or any other person appointed by him in connection with the audit of the accounts of the Central Authority shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Central Authority.

(4) The accounts of the Central Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government which shall cause the same to be laid before each House of Parliament.

27. (1) The Central Authority shall prepare once in every year, in such form, manner and at such time as may be prescribed, an annual report giving full account of its activities during the previous year and such other reports and returns, as may be directed, and copies of such report and returns shall be forwarded to the Central Government.

Furnishing of
annual
reports, etc.

(2) A copy of the annual report received under sub-section (1) shall be laid, as soon as may be after it is received, before each House of Parliament.

CHAPTER IV

CONSUMER DISPUTES REDRESSAL COMMISSION

28. (1) The State Government shall, by notification, establish a District Consumer Disputes Redressal Commission, to be known as the District Commission, in each district of the State:

Establishment
of District
Consumer
Disputes
Redressal
Commission.

Provided that the State Government may, if it deems fit, establish more than one District Commission in a district.

(2) Each District Commission shall consist of—

(a) a President; and

(b) not less than two and not more than such number of members as may be prescribed, in consultation with the Central Government.

Qualifications, etc., of President and members of District Commission.

Salaries, allowances and other terms and conditions of service of President and members of District Commission.

Transitional provision.

Vacancy in office of member of District Commission.

Officers and other employees of District Commission.

Jurisdiction of District Commission.

29. The Central Government may, by notification, make rules to provide for the qualifications, method of recruitment, procedure for appointment, term of office, resignation and removal of the President and members of the District Commission.

30. The State Government may, by notification, make rules to provide for salaries and allowances and other terms and conditions of service of the President, and members of the District Commission.

31. Any person appointed as President or, as the case may be, a member of the District Commission immediately before the commencement of this Act shall hold office as such as President or, as the case may be, as member till the completion of his term for which he has been appointed.

32. If, at any time, there is a vacancy in the office of the President or member of a District Commission, the State Government may, by notification, direct—

(a) any other District Commission specified in that notification to exercise the jurisdiction in respect of that district also; or

(b) the President or a member of any other District Commission specified in that notification to exercise the powers and discharge the functions of the President or member of that District Commission also.

33. (1) The State Government shall provide the District Commission with such officers and other employees as may be required to assist the District Commission in the discharge of its functions.

(2) The officers and other employees of the District Commission shall discharge their functions under the general superintendence of the President of the District Commission.

(3) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the District Commission shall be such as may be prescribed.

34. (1) Subject to the other provisions of this Act, the District Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration does not exceed one crore rupees:

Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit.

(2) A complaint shall be instituted in a District Commission within the local limits of whose jurisdiction,—

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, ordinarily resides or carries on business or has a branch office or personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case the permission of the District Commission is given; or

(c) the cause of action, wholly or in part, arises; or

(d) the complainant resides or personally works for gain.

(3) The District Commission shall ordinarily function in the district headquarters and may perform its functions at such other place in the district, as the State Government may, in consultation with the State Commission, notify in the Official Gazette from time to time.

35. (1) A complaint, in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided, may be filed with a District Commission by—

Manner in which complaint shall be made.

(a) the consumer,—

(i) to whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided; or

(ii) who alleges unfair trade practice in respect of such goods or service;

(b) any recognised consumer association, whether the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided, or who alleges unfair trade practice in respect of such goods or service, is a member of such association or not;

(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Commission, on behalf of, or for the benefit of, all consumers so interested; or

(d) the Central Government, the Central Authority or the State Government, as the case may be:

Provided that the complaint under this sub-section may be filed electronically in such manner as may be prescribed.

Explanation.—For the purposes of this sub-section, "recognised consumer association" means any voluntary consumer association registered under any law for the time being in force.

(2) Every complaint filed under sub-section (1) shall be accompanied with such fee and payable in such manner, including electronic form, as may be prescribed.

36. (1) Every proceeding before the District Commission shall be conducted by the President of that Commission and atleast one member thereof, sitting together:

Proceedings before District Commission.

Provided that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.

(2) On receipt of a complaint made under section 35, the District Commission may, by order, admit the complaint for being proceeded with or reject the same:

Provided that a complaint shall not be rejected under this section unless an opportunity of being heard has been given to the complainant:

Provided further that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was filed.

(3) Where the District Commission does not decide the issue of admissibility of the complaint within the period so specified, it shall be deemed to have been admitted.

37. (1) At the first hearing of the complaint after its admission, or at any later stage, if it appears to the District Commission that there exists elements of a settlement which may be acceptable to the parties, except in such cases as may be prescribed, it may direct the parties to give in writing, within five days, consent to have their dispute settled by mediation in accordance with the provisions of Chapter V.

Reference to mediation.

(2) Where the parties agree for settlement by mediation and give their consent in writing, the District Commission shall, within five days of receipt of such consent, refer the

matter for mediation, and in such case, the provisions of Chapter V, relating to mediation, shall apply.

Procedure on admission of complaint.

38. (1) The District Commission shall, on admission of a complaint, or in respect of cases referred for mediation on failure of settlement by mediation, proceed with such complaint.

(2) Where the complaint relates to any goods, the District Commission shall,—

(a) refer a copy of the admitted complaint, within twenty-one days from the date of its admission to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by it;

(b) if the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Commission, proceed to settle the consumer dispute in the manner specified in clauses (c) to (g);

(c) if the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, obtain a sample of the goods from the complainant, seal it and authenticate it in the manner as may be prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory to make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Commission within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by it;

(d) before any sample of the goods is referred to any appropriate laboratory under clause (c), require the complainant to deposit to the credit of the Commission such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question;

(e) remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, it shall forward a copy of the report along with such remarks as it may feel appropriate to the opposite party;

(f) if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, require the opposite party or the complainant to submit in writing his objections with regard to the report made by the appropriate laboratory;

(g) give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (f) and issue an appropriate order under section 39.

(3) The District Commission shall, if the complaint admitted by it under sub-section (2) of section 36 relates to goods in respect of which the procedure specified in sub-section (2) cannot be followed, or if the complaint relates to any services,—

(a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Commission;

(b) if the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Commission, it shall proceed to settle the consumer dispute—

(i) on the basis of evidence brought to its notice by the complainant and the opposite party, if the opposite party denies or disputes the allegations contained in the complaint, or

(ii) *ex parte* on the basis of evidence brought to its notice by the complainant, where the opposite party omits or fails to take any action to represent his case within the time given by the Commission;

(c) decide the complaint on merits if the complainant fails to appear on the date of hearing.

(4) For the purposes of sub-sections (2) and (3), the District Commission may, by order, require an electronic service provider to provide such information, documents or records, as may be specified in that order.

(5) No proceedings complying with the procedure laid down in sub-sections (1) and (2) shall be called in question in any court on the ground that the principles of natural justice have not been complied with.

(6) Every complaint shall be heard by the District Commission on the basis of affidavit and documentary evidence placed on record:

Provided that where an application is made for hearing or for examination of parties in person or through video conferencing, the District Commission may, on sufficient cause being shown, and after recording its reasons in writing, allow the same.

(7) Every complaint shall be disposed of as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities:

Provided that no adjournment shall ordinarily be granted by the District Commission unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Commission:

Provided further that the District Commission shall make such orders as to the costs occasioned by the adjournment as may be specified by regulations:

Provided also that in the event of a complaint being disposed of after the period so specified, the District Commission shall record in writing, the reasons for the same at the time of disposing of the said complaint.

(8) Where during the pendency of any proceeding before the District Commission, if it appears necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.

(9) For the purposes of this section, the District Commission shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

(a) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;

(b) requiring the discovery and production of any document or other material object as evidence;

(c) receiving of evidence on affidavits;

(d) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;

(e) issuing of commissions for the examination of any witness, or document; and

(f) any other matter which may be prescribed by the Central Government.

(10) Every proceeding before the District Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, and the District Commission shall be deemed to be a criminal court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

45 of 1860.

2 of 1974.

5 of 1908.

(II) Where the complainant is a consumer referred to in sub-clause (v) of clause (5) of section 2, the provisions of Order I Rule 8 of the First Schedule to the Code of Civil Procedure, 1908 shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Commission thereon.

(12) In the event of death of a complainant who is a consumer or of the opposite party against whom the complaint has been filed, the provisions of Order XXII of the First Schedule to the Code of Civil Procedure, 1908 shall apply subject to the modification that every reference therein to the plaintiff and the defendant shall be construed as reference to a complainant or the opposite party, as the case may be.

5 of 1908.

Findings of
District
Commission.

39. (1) Where the District Commission is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services or any unfair trade practices, or claims for compensation under product liability are proved, it shall issue an order to the opposite party directing him to do one or more of the following, namely:—

(a) to remove the defect pointed out by the appropriate laboratory from the goods in question;

(b) to replace the goods with new goods of similar description which shall be free from any defect;

(c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant along with such interest on such price or charges as may be decided;

(d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party:

Provided that the District Commission shall have the power to grant punitive damages in such circumstances as it deems fit;

(e) to pay such amount as may be awarded by it as compensation in a product liability action under Chapter VI;

(f) to remove the defects in goods or deficiencies in the services in question;

(g) to discontinue the unfair trade practice or restrictive trade practice and not to repeat them;

(h) not to offer the hazardous or unsafe goods for sale;

(i) to withdraw the hazardous goods from being offered for sale;

(j) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;

(k) to pay such sum as may be determined by it, if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently:

Provided that the minimum amount of sum so payable shall not be less than twenty-five per cent. of the value of such defective goods sold or service provided, as the case may be, to such consumers;

(l) to issue corrective advertisement to neutralise the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;

(m) to provide for adequate costs to parties; and

(n) to cease and desist from issuing any misleading advertisement.

(2) Any amount obtained under sub-section (1) shall be credited to such fund and utilised in such manner as may be prescribed.

(3) In any proceeding conducted by the President and a member and if they differ on any point or points, they shall state the point or points on which they differ and refer the same to another member for hearing on such point or points and the opinion of the majority shall be the order of the District Commission:

Provided that the other member shall give his opinion on such point or points referred to him within a period of one month from the date of such reference.

(4) Every order made by the District Commission under sub-section (1) shall be signed by the President and the member who conducted the proceeding:

Provided that where the order is made as per majority opinion under sub-section (3), such order shall also be signed by the other member.

40. The District Commission shall have the power to review any of the order passed by it if there is an error apparent on the face of the record, either of its own motion or on an application made by any of the parties within thirty days of such order.

Review by
District
Commission
in certain
cases.

41. Any person aggrieved by an order made by the District Commission may prefer an appeal against such order to the State Commission on the grounds of facts or law within a period of forty-five days from the date of the order, in such form and manner, as may be prescribed:

Appeal
against order
of District
Commission.

Provided that the State Commission may entertain an appeal after the expiry of the said period of forty-five days, if it is satisfied that there was sufficient cause for not filing it within that period:

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the District Commission, shall be entertained by the State Commission unless the appellant has deposited fifty per cent. of that amount in the manner as may be prescribed:

Provided also that no appeal shall lie from any order passed under sub-section (1) of section 81 by the District Commission pursuant to a settlement by mediation under section 80.

42. (1) The State Government shall, by notification, establish a State Consumer Disputes Redressal Commission, to be known as the State Commission, in the State.

Establishment
of State
Consumer
Disputes
Redressal
Commission.

(2) The State Commission shall ordinarily function at the State capital and perform its functions at such other places as the State Government may in consultation with the State Commission notify in the Official Gazette:

Provided that the State Government may, by notification, establish regional benches of the State Commission, at such places, as it deems fit.

(3) Each State Commission shall consist of—

(a) a President; and

(b) not less than four or not more than such number of members as may be prescribed in consultation with the Central Government.

Qualifications,
etc., of
President and
members of
State
Commission.

Salaries,
allowances and
other terms
and conditions
of service of
President and
members of
State
Commission.

Transitional
provision.

Officers and
employees of
State
Commission.

Jurisdiction of
State
Commission.

43. The Central Government may, by notification, make rules to provide for the qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the President and members of the State Commission.

44. The State Government may, by notification, make rules to provide for salaries and allowances and other terms and conditions of service of the President and members of the State Commission.

45. Any person appointed as President or, as the case may be, a member of the State Commission immediately before the commencement of this Act shall hold office as such, as President or member, as the case may be, till the completion of his term.

46. (1) The State Government shall determine the nature and categories of the officers and other employees required to assist the State Commission in the discharge of its functions and provide the Commission with such officers and other employees as it may think fit.

(2) The officers and other employees of the State Commission shall discharge their functions under the general superintendence of the President.

(3) The salaries and allowances payable to and the other terms and conditions of service of, the officers and other employees of the State Commission shall be such as may be prescribed.

47. (1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction—

(a) to entertain—

(i) complaints where the value of the goods or services paid as consideration, exceeds rupees one crore, but does not exceed rupees ten crore:

Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit;

(ii) complaints against unfair contracts, where the value of goods or services paid as consideration does not exceed ten crore rupees;

(iii) appeals against the orders of any District Commission within the State; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Commission within the State, where it appears to the State Commission that such District Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

(2) The jurisdiction, powers and authority of the State Commission may be exercised by Benches thereof, and a Bench may be constituted by the President with one or more members as the President may deem fit:

Provided that the senior-most member shall preside over the Bench.

(3) Where the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members and such point or points shall

be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it:

Provided that the President or the other members, as the case may be, shall give opinion on the point or points so referred within a period of one month from the date of such reference.

(4) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction,—

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, ordinarily resides or carries on business or has a branch office or personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided in such case, the permission of the State Commission is given; or

(c) the cause of action, wholly or in part, arises; or

(d) the complainant resides or personally works for gain.

48. On the application of the complainant or of its own motion, the State Commission may, at any stage of the proceeding, transfer any complaint pending before a District Commission to another District Commission within the State if the interest of justice so requires.

Transfer of cases.

49. (1) The provisions relating to complaints under sections 35, 36, 37, 38 and 39 shall, with such modifications as may be necessary, be applicable to the disposal of complaints by the State Commission.

Procedure applicable to State Commission.

(2) Without prejudice to the provisions of sub-section (1), the State Commission may also declare any terms of contract, which is unfair to any consumer, to be null and void.

50. The State Commission shall have the power to review any of the order passed by it if there is an error apparent on the face of the record, either of its own motion or on an application made by any of the parties within thirty days of such order.

Review by State Commission in certain cases.

51. (1) Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clauses (i) or (ii) of clause (a) of sub-section (1) of section 47 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed:

Appeal to National Commission.

Provided that the National Commission shall not entertain the appeal after the expiry of the said period of thirty days unless it is satisfied that there was sufficient cause for not filing it within that period:

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited fifty per cent. of that amount in the manner as may be prescribed.

(2) Save as otherwise expressly provided under this Act or by any other law for the time being in force, an appeal shall lie to the National Commission from any order passed in appeal by any State Commission, if the National Commission is satisfied that the case involves a substantial question of law.

(3) In an appeal involving a question of law, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the National Commission is satisfied that a substantial question of law is involved in any case, it shall formulate that question and hear the appeal on that question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the National Commission to hear, for reasons to be recorded in writing, the appeal on any other substantial question of law, if it is satisfied that the case involves such question of law.

(5) An appeal may lie to the National Commission under this section from an order passed *ex parte* by the State Commission.

Hearing of appeal.

52. An appeal filed before the State Commission or the National Commission, as the case may be, shall be heard as expeditiously as possible and every endeavour shall be made to dispose of the appeal within a period of ninety days from the date of its admission:

Provided that no adjournment shall ordinarily be granted by the State Commission or the National Commission, as the case may be, unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by such Commission:

Provided further that the State Commission or the National Commission, as the case may be, shall make such orders as to the costs occasioned by the adjournment, as may be specified by regulations:

Provided also that in the event of an appeal being disposed of after the period so specified, the State Commission or the National Commission, as the case may be, shall record in writing the reasons for the same at the time of disposing of the said appeal.

Establishment of National Consumer Disputes Redressal Commission.

53. (1) The Central Government shall, by notification, establish a National Consumer Disputes Redressal Commission, to be known as the National Commission.

(2) The National Commission shall ordinarily function at the National Capital Region and perform its functions at such other places as the Central Government may in consultation with the National Commission notify in the Official Gazette:

Provided that the Central Government may, by notification, establish regional Benches of the National Commission, at such places, as it deems fit.

Composition of National Commission.

54. The National Commission shall consist of—

(a) a President; and

(b) not less than four and not more than such number of members as may be prescribed.

Qualifications, etc., of President and members of National Commission.

55. (1) The Central Government may, by notification, make rules to provide for qualifications, appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the President and members of the National Commission:

Provided that the President and members of the National Commission shall hold office for such term as specified in the rules made by the Central Government but not exceeding five years from the date on which he enters upon his office and shall be eligible for re-appointment:

Provided further that no President or members shall hold office as such after he has attained such age as specified in the rules made by the Central Government which shall not exceed,—

(a) in the case of the President, the age of seventy years;

(b) in the case of any other member, the age of sixty-seven years.

(2) Neither the salary and allowances nor the other terms and conditions of service of President and members of the National Commission shall be varied to his disadvantage after his appointment.

7 of 2017.
68 of 1986.

Transitional provision.

56. The President and every other member appointed immediately before the commencement of section 177 of the Finance Act, 2017 shall continue to be governed by the provisions of the Consumer Protection Act, 1986 and the rules made thereunder as if this Act had not come into force.

57. (1) The Central Government shall provide, in consultation with the President of the National Commission, such number of officers and other employees to assist the National Commission in the discharge of its functions as it may think fit.

(2) The officers and other employees of the National Commission shall discharge their functions under the general superintendence of the President of the National Commission.

(3) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the National Commission shall be such as may be prescribed.

58. (1) Subject to the other provisions of this Act, the National Commission shall have jurisdiction—

(a) to entertain—

(i) complaints where the value of the goods or services paid as consideration exceeds rupees ten crore:

Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit.

(ii) complaints against unfair contracts, where the value of goods or services paid as consideration exceeds ten crore rupees;

(iii) appeals against the orders of any State Commission;

(iv) appeals against the orders of the Central Authority; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

(2) The jurisdiction, powers and authority of the National Commission may be exercised by Benches thereof and a Bench may be constituted by the President with one or more members as he may deem fit:

Provided that the senior-most member of the Bench shall preside over the Bench.

(3) Where the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it:

Provided that the President or the other member, as the case may be, shall give opinion on the point or points so referred within a period of two months from the date of such reference.

59. (1) The provisions relating to complaints under sections 35, 36, 37, 38 and 39 shall, with such modifications as may be considered necessary, be applicable to the disposal of complaints by the National Commission.

Other officers and employees of National Commission.

Jurisdiction of National Commission.

(2) Without prejudice to sub-section (1), the National Commission may also declare any terms of contract, which is unfair to any consumer to be null and void.

Procedure applicable to National Commission.

Review by National Commission in certain cases.

Power to set aside *ex parte* orders.

Transfer of cases.

Vacancy in office of President of National Commission.

Vacancies or defects in appointment not to invalidate orders.

Service of notice, etc.

60. The National Commission shall have the power to review any of the order passed by it if there is an error apparent on the face of the record, either of its own motion or on an application made by any of the parties within thirty days of such order.

61. Where an order is passed by the National Commission *ex parte*, the aggrieved party may make an application to the Commission for setting aside such order.

62. On the application of the complainant or of its own motion, the National Commission may, at any stage of the proceeding, in the interest of justice, transfer any complaint pending before the District Commission of one State to a District Commission of another State or before one State Commission to another State Commission.

63. When the office of President of the National Commission is vacant or a person occupying such office is, by reason of absence or otherwise, unable to perform the duties of his office, these shall be performed by the senior-most member of the National Commission:

Provided that where a retired Judge of a High Court or a person who has been a Judicial Member is a member of the National Commission, such member or where the number of such members is more than one, the senior-most person amongst such members, shall preside over the National Commission in the absence of President of that Commission.

64. No act or proceeding of the District Commission, the State Commission or the National Commission shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.

65. (1) All notices, required by this Act to be served, shall be served by delivering or transmitting a copy thereof by registered post acknowledgment due addressed to opposite party against whom complaint is made or to the complainant by speed post or by such courier service, approved by the District Commission, the State Commission or the National Commission, as the case may be, or by any other mode of transmission of documents including electronic means.

(2) Without prejudice to the provisions contained in sub-section (1), the notice required by this Act may be served on an electronic service provider at the address provided by it on the electronic platform from where it provides its services as such and for this purpose, the electronic service provider shall designate a nodal officer to accept and process such notices.

(3) When an acknowledgment or any other receipt purporting to be signed by the opposite party or his agent or, as the case may be, by the complainant is received by the District Commission, the State Commission or the National Commission, as the case may be, or postal article containing the notice is received back by such District Commission, State Commission or the National Commission, with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the opposite party or his agent or complainant had refused to take delivery of the postal article containing the notice or had refused to accept the notice by any other means specified in sub-section (1) when tendered or transmitted to him, the District Commission or the State Commission or the National Commission, as the case may be, shall declare that the notice has been duly served on the opposite party or to the complainant, as the case may be:

Provided that where the notice was properly addressed, pre-paid and duly sent by registered post acknowledgment due, a declaration referred to in this sub-section shall be made notwithstanding the fact that the acknowledgment has been lost or misplaced, or for any other reason, has not been received by the District Commission, the State Commission or the National Commission, as the case may be, within thirty days from the date of issue of notice.

(4) All notices required to be served on an opposite party or to complainant, as the case may be, shall be deemed to be sufficiently served, if addressed in the case of the opposite party, to the place where business or profession is carried on, and in case of the complainant, the place where such person actually and voluntarily resides.

66. Where the National Commission or the State Commission, as the case may be, on an application by a complainant or otherwise, is of the opinion that it involves the larger interest of consumers, it may direct any individual or organisation or expert to assist the National Commission or the State Commission, as the case may be.

Experts to assist National Commission or State Commission.

67. Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clauses (i) or (ii) of clause (a) of sub-section (I) of section 58, may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order:

Appeal against order of National Commission.

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period:

Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited fifty per cent. of that amount in the manner as may be prescribed.

68. Every order of a District Commission or the State Commission or the National Commission, as the case may be, shall, if no appeal has been preferred against such order under the provisions of this Act, be final.

Finality of orders.

69. (1) The District Commission, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

Limitation period.

(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Commission, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:

Provided that no such complaint shall be entertained unless the District Commission or the State Commission or the National Commission, as the case may be, records its reasons for condoning such delay.

Administrative control.

70. (1) The National Commission shall have the authority to lay down such adequate standards in consultation with the Central Government from time to time, for better protection of the interests of consumers and for that purpose, shall have administrative control over all the State Commissions in the following matters, namely:—

(a) monitoring performance of the State Commissions in terms of their disposal by calling for periodical returns regarding the institution, disposal and pendency of cases;

(b) investigating into any allegations against the President and members of a State Commission and submitting inquiry report to the State Government concerned along with copy endorsed to the Central Government for necessary action;

(c) issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the opposite parties, furnishing of English translation of judgments written in any language, speedy grant of copies of documents;

(d) overseeing the functioning of the State Commission or the District Commission either by way of inspection or by any other means, as the National Commission may like to order from time to time, to ensure that the objects and purposes of the Act are best served and the standards set by the National Commission are implemented without interfering with their quasi-judicial freedom.

(2) There shall be a monitoring cell to be constituted by the President of the National Commission to oversee the functioning of the State Commissions from the administrative point of view.

(3) The State Commission shall have administrative control over all the District Commissions within its jurisdiction in all matters referred to in sub-section (1).

(4) The National Commission and the State Commissions shall furnish to the Central Government periodically or as and when required, any information including the pendency of cases in such form and manner as may be prescribed.

(5) The State Commission shall furnish, periodically or as and when required to the State Government any information including pendency of cases in such form and manner as may be prescribed.

Enforcement
of orders of
District
Commission,
State
Commission
and National
Commission.

Penalty for
non-
compliance of
order.

Appeal against
order passed
under section 72.

71. Every order made by a District Commission, State Commission or the National Commission shall be enforced by it in the same manner as if it were a decree made by a Court in a suit before it and the provisions of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 shall, as far as may be, applicable, subject to the modification that every reference therein to the decree shall be construed as reference to the order made under this Act.

5 of 1908.

72. (1) Whoever fails to comply with any order made by the District Commission or the State Commission or the National Commission, as the case may be, shall be punishable with imprisonment for a term which shall not be less than one month, but which may extend to three years, or with fine, which shall not be less than twenty-five thousand rupees, but which may extend to one lakh rupees, or with both.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the District Commission, the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of first class for the trial of offences under sub-section (1), and on conferment of such powers, the District Commission or the State Commission or the National Commission, as the case may be, shall be deemed to be a Judicial Magistrate of First Class for the purposes of the Code of Criminal Procedure, 1973.

2 of 1974.

(3) Save as otherwise provided, the offences under sub-section (1) shall be tried summarily by the District Commission or the State Commission or the National Commission, as the case may be.

73. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, where an order is passed under sub-section (1) of section 72, an appeal shall lie, both on facts and on law from—

2 of 1974.

- (a) the order made by the District Commission to the State Commission;
- (b) the order made by the State Commission to the National Commission; and
- (c) the order made by the National Commission to the Supreme Court.

(2) Except as provided in sub-section (1), no appeal shall lie before any court, from any order of a District Commission or a State Commission or the National Commission, as the case may be.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of order of a District Commission or a State Commission or the National Commission, as the case may be:

Provided that the State Commission or the National Commission or the Supreme Court, as the case may be, may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period of thirty days.

CHAPTER V

MEDIATION

74. (1) The State Government shall establish, by notification, a consumer mediation cell to be attached to each of the District Commissions and the State Commissions of that State.

Establishment of consumer mediation cell.

(2) The Central Government shall establish, by notification, a consumer mediation cell to be attached to the National Commission and each of the regional Benches.

(3) A consumer mediation cell shall consist of such persons as may be prescribed.

(4) Every consumer mediation cell shall maintain—

- (a) a list of empanelled mediators;
- (b) a list of cases handled by the cell;
- (c) record of proceeding; and
- (d) any other information as may be specified by regulations.

(5) Every consumer mediation cell shall submit a quarterly report to the District Commission, State Commission or the National Commission to which it is attached, in the manner specified by regulations.

Empanelment of mediators.

75. (1) For the purpose of mediation, the National Commission or the State Commission or the District Commission, as the case may be, shall prepare a panel of the mediators to be maintained by the consumer mediation cell attached to it, on the recommendation of a selection committee consisting of the President and a member of that Commission.

(2) The qualifications and experience required for empanelment as mediator, the procedure for empanelment, the manner of training empanelled mediators, the fee payable to empanelled mediator, the terms and conditions for empanelment, the code of conduct for empanelled mediators, the grounds on which, and the manner in which, empanelled mediators shall be removed or empanelment shall be cancelled and other matters relating thereto, shall be such as may be specified by regulations.

(3) The panel of mediators prepared under sub-section (1) shall be valid for a period of five years, and the empanelled mediators shall be eligible to be considered for re-empanelment for another term, subject to such conditions as may be specified by regulations.

76. The District Commission, the State Commission or the National Commission shall, while nominating any person from the panel of mediators referred to in section 75, consider his suitability for resolving the consumer dispute involved.

Nomination of mediators from panel.

77. It shall be the duty of the mediator to disclose—

- (a) any personal, professional or financial interest in the outcome of the consumer dispute;
- (b) the circumstances which may give rise to a justifiable doubt as to his independence or impartiality; and
- (c) such other facts as may be specified by regulations.

Duty of mediator to disclose certain facts.

78. Where the District Commission or the State Commission or the National Commission, as the case may be, is satisfied, on the information furnished by the mediator or on the information received from any other person including parties to the complaint and after hearing the mediator, it shall replace such mediator by another mediator.

Replacement of mediator in certain cases.

Procedure for mediation.

79. (1) The mediation shall be held in the consumer mediation cell attached to the District Commission, the State Commission or the National Commission, as the case may be.

(2) Where a consumer dispute is referred for mediation by the District Commission or the State Commission or the National Commission, as the case may be, the mediator nominated by such Commission shall have regard to the rights and obligations of the parties, the usages of trade, if any, the circumstances giving rise to the consumer dispute and such other relevant factors, as he may deem necessary and shall be guided by the principles of natural justice while carrying out mediation.

(3) The mediator so nominated shall conduct mediation within such time and in such manner as may be specified by regulations.

Settlement through mediation.

80. (1) Pursuant to mediation, if an agreement is reached between the parties with respect to all of the issues involved in the consumer dispute or with respect to only some of the issues, the terms of such agreement shall be reduced to writing accordingly, and signed by the parties to such dispute or their authorised representatives.

(2) The mediator shall prepare a settlement report of the settlement and forward the signed agreement along with such report to the concerned Commission.

(3) Where no agreement is reached between the parties within the specified time or the mediator is of the opinion that settlement is not possible, he shall prepare his report accordingly and submit the same to the concerned Commission.

Recording settlement and passing of order.

81. (1) The District Commission or the State Commission or the National Commission, as the case may be, shall, within seven days of the receipt of the settlement report, pass suitable order recording such settlement of consumer dispute and dispose of the matter accordingly.

(2) Where the consumer dispute is settled only in part, the District Commission or the State Commission or the National Commission, as the case may be, shall record settlement of the issues which have been so settled and continue to hear other issues involved in such consumer dispute.

(3) Where the consumer dispute could not be settled by mediation, the District Commission or the State Commission or the National Commission, as the case may be, shall continue to hear all the issues involved in such consumer dispute.

CHAPTER VI

PRODUCT LIABILITY

Application of chapter.

82. This Chapter shall apply to every claim for compensation under a product liability action by a complainant for any harm caused by a defective product manufactured by a product manufacturer or serviced by a product service provider or sold by a product seller.

Product liability action.

83. A product liability action may be brought by a complainant against a product manufacturer or a product service provider or a product seller, as the case may be, for any harm caused to him on account of a defective product.

Liability of product manufacturer.

84. (1) A product manufacturer shall be liable in a product liability action, if—

- (a) the product contains a manufacturing defect; or
- (b) the product is defective in design; or
- (c) there is a deviation from manufacturing specifications; or
- (d) the product does not conform to the express warranty; or

(e) the product fails to contain adequate instructions of correct usage to prevent any harm or any warning regarding improper or incorrect usage.

(2) A product manufacturer shall be liable in a product liability action even if he proves that he was not negligent or fraudulent in making the express warranty of a product.

85. A product service provider shall be liable in a product liability action, if—

(a) the service provided by him was faulty or imperfect or deficient or inadequate in quality, nature or manner of performance which is required to be provided by or under any law for the time being in force, or pursuant to any contract or otherwise; or

(b) there was an act of omission or commission or negligence or conscious withholding any information which caused harm; or

(c) the service provider did not issue adequate instructions or warnings to prevent any harm; or

(d) the service did not conform to express warranty or the terms and conditions of the contract.

86. A product seller who is not a product manufacturer shall be liable in a product liability action, if—

(a) he has exercised substantial control over the designing, testing, manufacturing, packaging or labelling of a product that caused harm; or

(b) he has altered or modified the product and such alteration or modification was the substantial factor in causing the harm; or

(c) he has made an express warranty of a product independent of any express warranty made by a manufacturer and such product failed to conform to the express warranty made by the product seller which caused the harm; or

(d) the product has been sold by him and the identity of product manufacturer of such product is not known, or if known, the service of notice or process or warrant cannot be effected on him or he is not subject to the law which is in force in India or the order, if any, passed or to be passed cannot be enforced against him; or

(e) he failed to exercise reasonable care in assembling, inspecting or maintaining such product or he did not pass on the warnings or instructions of the product manufacturer regarding the dangers involved or proper usage of the product while selling such product and such failure was the proximate cause of the harm.

87. (1) A product liability action cannot be brought against the product seller if, at the time of harm, the product was misused, altered, or modified.

(2) In any product liability action based on the failure to provide adequate warnings or instructions, the product manufacturer shall not be liable, if—

(a) the product was purchased by an employer for use at the workplace and the product manufacturer had provided warnings or instructions to such employer;

(b) the product was sold as a component or material to be used in another product and necessary warnings or instructions were given by the product manufacturer to the purchaser of such component or material, but the harm was caused to the complainant by use of the end product in which such component or material was used;

(c) the product was one which was legally meant to be used or dispensed only by or under the supervision of an expert or a class of experts and the product manufacturer had employed reasonable means to give the warnings or instructions for usage of such product to such expert or class of experts; or

(d) the complainant, while using such product, was under the influence of alcohol or any prescription drug which had not been prescribed by a medical practitioner.

Liability of
product
service
provider.

Liability of
product sellers.

Exceptions to
product
liability
action.

(3) A product manufacturer shall not be liable for failure to instruct or warn about a danger which is obvious or commonly known to the user or consumer of such product or which, such user or consumer, ought to have known, taking into account the characteristics of such product.

CHAPTER VII

OFFENCES AND PENALTIES

Penalty for non-compliance of direction of Central Authority.

Punishment for false or misleading advertisement.

Punishment for manufacturing for sale or storing, selling or distributing or importing products containing adulterant.

88. Whoever, fails to comply with any direction of the Central Authority under sections 20 and 21, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to twenty lakh rupees, or with both.

89. Any manufacturer or service provider who causes a false or misleading advertisement to be made which is prejudicial to the interest of consumers shall be punished with imprisonment for a term which may extend to two years and with fine which may extend to ten lakh rupees; and for every subsequent offence, be punished with imprisonment for a term which may extend to five years and with fine which may extend to fifty lakh rupees.

90. (1) Whoever, by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any product containing an adulterant shall be punished, if such act—

(a) does not result in any injury to the consumer, with imprisonment for a term which may extend to six months and with fine which may extend to one lakh rupees;

(b) causing injury not amounting to grievous hurt to the consumer, with imprisonment for a term which may extend to one year and with fine which may extend to three lakh rupees;

(c) causing injury resulting in grievous hurt to the consumer, with imprisonment for a term which may extend to seven years and with fine which may extend to five lakh rupees; and

(d) results in the death of a consumer, with imprisonment for a term which shall not be less than seven years, but which may extend to imprisonment for life and with fine which shall not be less than ten lakh rupees.

(2) The offences under clauses (c) and (d) of sub-section (1) shall be cognizable and non-bailable.

(3) Notwithstanding the punishment under sub-section (1), the court may, in case of first conviction, suspend any licence issued to the person referred to in that sub-section, under any law for the time being in force, for a period up to two years, and in case of second or subsequent conviction, cancel the licence.

*Explanation.—*For the purposes of this section,—

(a) "adulterant" means any material including extraneous matter which is employed or used for making a product unsafe;

(b) "grievous hurt" shall have the same meaning as assigned to it in section 320 of the Indian Penal Code.

Punishment for manufacturing for sale or for storing or selling or distributing or importing spurious goods.

91. (1) Whoever, by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any spurious goods shall be punished, if such act—

(a) causing injury not amounting to grievous hurt to the consumer, with imprisonment for a term which may extend to one year and with fine which may extend to three lakh rupees;

(b) causing injury resulting in grievous hurt to the consumer, with imprisonment for a term which may extend to seven years and with fine which may extend to five lakh rupees;

(c) results in the death of a consumer, with imprisonment for a term which shall not be less than seven years, but may extend to imprisonment for life and with fine which shall not be less than ten lakh rupees.

(2) The offences under clauses (b) and (c) of sub-section (1) shall be cognizable and non-bailable.

(3) Notwithstanding the punishment under sub-section (1), the court may, in case of first conviction, suspend any licence issued to the person referred to in that sub-section, under any law for the time being in force, for a period up to two years, and in case of second or subsequent conviction, cancel the licence.

92. No cognizance shall be taken by a competent court of any offence under sections 88 and 89 except on a complaint filed by the Central Authority or any officer authorised by it in this behalf.

Cognizance of offence by court.

93. The Director General or any other officer, exercising powers under section 22, who knows that there are no reasonable grounds for so doing, and yet—

Vexatious search.

- (a) searches, or causes to be searched any premises; or
- (b) seizes any record, register or other document or article,

shall, for every such offence, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees or with both.

CHAPTER VIII

MISCELLANEOUS

94. For the purposes of preventing unfair trade practices in e-commerce, direct selling and also to protect the interest and rights of consumers, the Central Government may take such measures in the manner as may be prescribed.

Measures to prevent unfair trade practices in e-commerce, direct selling, etc.

95. The Presidents and members of the District Commission, the State Commission and the National Commission, and officers and other employees thereof, the Chief Commissioner and the Commissioner of the Central Authority, the Director General, the Additional Director General, the Director, the Joint Director, the Deputy Director and the Assistant Director and all other officers and employees of the Central Authority and other persons performing any duty under this Act, while acting or purporting to act in pursuance of any of the provisions of this Act, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Presidents, members, Chief Commissioner, Commissioner and certain officers to be public servants.

45 of 1860.

96. (1) Any offence punishable under sections 88 and 89, may, either before or after the institution of the prosecution, be compounded, on payment of such amount as may be prescribed:

Compounding of offences.

Provided that no compounding of such offence shall be made without the leave of the court before which a complaint has been filed under section 92:

Provided further that such sum shall not, in any case, exceed the maximum amount of the fine, which may be imposed under this Act for the offence so compounded.

(2) The Central Authority or any officer as may be specially authorised by him in this behalf, may compound offences under sub-section (1).

(3) Nothing in sub-section (1) shall apply to person who commits the same or similar offence, within a period of three years from the date on which the first offence, committed by him, was compounded.

Explanation.—For the purposes of this sub-section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.

(4) Where an offence has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded.

(5) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Central Authority or an officer of the Central Authority empowered in this behalf shall be deemed to amount to an acquittal within the meaning of the Code of Criminal Procedure, 1973.

2 of 1974.

Manner of crediting penalty.

Protection of action taken in good faith.

Power to give directions by Central Government.

Act not in derogation of any other law.

Power of Central Government to make rules.

97. The penalty collected under section 21 and the amount collected under section 96 shall be credited to such fund as may be prescribed.

98. No suit, prosecution or other legal proceeding shall lie against the Presidents and members of the District Commission, the State Commission and the National Commission, the Chief Commissioner, the Commissioner, any officer or employee and other person performing any duty under this Act, for any act which is in good faith done or intended to be done in pursuance of this Act or under any rule or order made thereunder.

99. (1) Without prejudice to the foregoing provisions of this Act, the Central Authority, shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy, as the Central Government may give in writing to it from time to time:

Provided that the Central Authority shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

100. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

101. (1) The Central Government may, by notification, make rules for carrying out any of the provisions contained in this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for,—

(a) the other class or classes of persons including public utility entities under clause (19) of section 2;

(b) the contest, lottery, game of chance or skill which are to be exempted under item (b) of sub-clause (iii) of clause (47) of section 2;

(c) the manner of issuing bill or cash memo or receipt for goods sold or services rendered under sub-clause (vii) of clause (47) of section 2;

(d) the number of other official or non-official members of the Central Council under clause (b) of sub-section (2) of section 3;

(e) the time and place of meeting of Central Council and the procedure for the transaction of its business under sub-section (2) of section 4;

(f) the number of Commissioners in the Central Authority under sub-section (2) of section 10;

(g) the qualifications for appointment, method of recruitment, procedure of appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the Chief Commissioner and other Commissioners of the Central Authority under section 11;

(h) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Central Authority under sub-section (2) of section 13;

(i) the qualifications for appointment of Director General, Additional Director General, Director, Joint Director, Deputy Director and Assistant Director and the manner of appointment under sub-section (2) of section 15;

(j) the manner of taking copies or extracts of document, record or article seized or produced before returning to the person under sub-section (3) of section 22;

(k) the officer and the manner of disposing of articles which are subject to speedy or natural decay under sub-section (4) of section 22;

(l) the form and manner for preparing annual statement of accounts by the Central Authority in consultation with the Comptroller and Auditor-General of India under sub-section (1) of section 26;

(m) the form in which, and the time within which, an annual report, other reports and returns may be prepared by the Central Authority under sub-section (1) of section 27;

(n) the qualifications for appointment, method of recruitment, procedure for appointment, term of office, resignation and removal of President and members of the District Commission under section 29;

(o) the other value of goods and services in respect of which the District Commission shall have jurisdiction to entertain complaints under proviso to sub-section (1) of section 34;

(p) the manner of electronically filing complaint under the proviso to sub-section (1) of section 35;

(q) the fee, electronic form and the manner of payment of fee for filing complaint under sub-section (2) of section 35;

(r) the cases which may not be referred for settlement by mediation under sub-section (1) of section 37;

(s) the manner of authentication of goods sampled in case of the National Commission under clause (c) of sub-section (2) of section 38;

(t) any other matter which may be prescribed under clause (f) of sub-section (9) of section 38;

(u) the fund where the amount obtained may be credited and the manner of utilisation of such amount under sub-section (2) of section 39;

(v) the form and the manner in which appeal may be preferred to the State Commission under section 41;

(w) the qualifications for appointment, method of recruitment, procedure for appointment, term of office, resignation and removal of the President and members of the State Commission under sub-section (4) of section 43;

(x) the other value of goods and services in respect of which the State Commission shall have jurisdiction under the proviso to sub-clause (i) of clause (a) of sub-section (1) of section 47;

(y) the form and manner of filing appeal to the National Commission, and the manner of depositing fifty per cent. of the amount before filing appeal, under sub-section (I) of section 51;

(z) the number of members of the National Commission under clause (b) of sub-section (I) of section 54;

(za) the qualifications, appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the President and members of the National Commission under sub-section (I) of section 55;

(zb) the salaries and allowances payable to, and other terms and conditions of service of, the officers and other employees of the National Commission under sub-section (3) of section 57;

(zc) the other value of goods and services in respect of which the National Commission shall have jurisdiction under the proviso to sub-clause (i) of clause (a) of sub-section (I) of section 58;

(zd) the manner of depositing fifty per cent. of the amount under the second proviso to section 67;

(ze) the form in which the National Commission and the State Commission shall furnish information to the Central Government under sub-section (4) of section 70;

(zf) the persons in the consumer mediation cell under sub-section (3) of section 74;

(zg) the measures to be taken by the Central Government to prevent unfair trade practices in e-commerce, direct selling under section 94;

(zh) the amount for compounding offences under sub-section (I) of section 96;

(zi) the fund to which the penalty and amount collected shall be credited under section 97; and

(zj) any other matter which is to be, or may be, prescribed, or in respect of which provisions are to be, or may be, made by rules.

Power of
State
Government
to make rules.

102. (1) The State Governments may, by notification, make rules for carrying out the provisions of this Act:

Provided that the Central Government may, frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under this section, and where any such model rules have been framed in respect of any such matter, they shall apply to the State until the rules in respect of that matter is made by the State Government and while making any such rules, so far as is practicable, they shall conform to such model rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the other class or classes of persons including public utility entities under clause (19) of section 2;

(b) the contest, lottery, game of chance or skill which are to be exempted under item (b) of sub-clause (iii) of clause (47) of section 2;

(c) the number of other official or non-official members of the State Council under clause (b) of sub-section (2) of section 6;

(d) the time and place of meeting of the State Council and the procedure for the transaction of its business under sub-section (4) of section 6;

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- (e) the number of other official and non-official members of District Council under clause (b) of sub-section (2) of section 8;
- (f) the time and place of meeting of the District Council and procedure for the transaction of its business under sub-section (4) of section 8;
- (g) the number of members of the District Commission under clause (b) of sub-section (2) of section 28;
- (h) the salaries and allowances payable to, and other terms and conditions of service of, the President and members of the District Commission under section 30;
- (i) the salaries and allowances payable to, and other terms and conditions of service of, the officers and other employees of the District Commission under sub-section (3) of section 33;
- (j) the manner of authentication of goods sampled by the State Commission and the District Commission under clause (c) of sub-section (2) of section 38;
- (k) the manner of depositing fifty per cent. of the amount before filing appeal under second proviso to section 41;
- (l) the number of members of the State Commission under sub-section (3) of section 42;
- (m) the salaries and allowances payable to, and other terms and conditions of service of, the President and members of the State Commission under section 44;
- (n) the salaries and allowances payable to, and other terms and conditions of service of, the officers and other employees of the State Commission under sub-section (3) of section 46;
- (o) the form in which the State Commission shall furnish information to the State Government under sub-section (5) of section 70;
- (p) the persons in the consumer mediation cell under sub-section (3) of section 74;
- (q) any other matter which is to be, or may be prescribed, or in respect of which provisions are to be, or may be, made by rules.

103. (1) The National Commission may, with the previous approval of the Central Government, by notification, make regulations not inconsistent with this Act to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

Power of
National
Commission
to make
regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may make provisions for—

- (a) the costs for adjournment to be imposed by the District Commission under the second proviso to sub-section (7) of section 38;
- (b) the costs for adjournment to be imposed by the State Commission or the National Commission, as the case may be, under the second proviso to section 52;
- (c) the maintenance of any other information by the consumer mediation cell under sub-section (4) of section 74;
- (d) the manner of submission of quarterly report by consumer mediation cell to the District Commission, the State Commission or the National Commission under sub-section (5) of section 74;
- (e) the qualifications and experience required for empanelment as mediator, the procedure for empanelment, the manner of training empanelled mediators, the fee payable to empanelled mediator, the terms and conditions for empanelment, the code

of conduct for empanelled mediators, the grounds on which, and the manner in which, empanelled mediators shall be removed or empanelment shall be cancelled and the other matters relating thereto under sub-section (2) of section 75;

(f) the conditions for re-empanelment of mediators for another term under sub-section (3) of section 75;

(g) the other facts to be disclosed by mediators under clause (c) of section 77;

(h) the time within which, and the manner in which, mediation may be conducted under sub-section (3) of section 79; and

(i) such other matter for which provision is to be, or may be, made by regulation.

Power of
Central
Authority to
make
regulations.

104. (1) The Central Authority may, with the previous approval of the Central Government, by notification, make regulations not inconsistent with this Act, for the purpose of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the procedure for engaging experts and professionals and the number of such experts and professionals under sub-section (3) of section 13;

(b) the procedure for transaction of business and the allocation of business of the Chief Commissioner and Commissioner under sub-section (1) of section 14;

(c) the form, manner and time within which, inquiries or investigation made by the Director-General shall be submitted to the Central Authority under sub-section (5) of section 15; and

(d) such other matter for which provision is to be, or may be, made by regulation.

Rules and
regulations to
be laid before
each House of
Parliament.

105. (1) Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

(2) Every rule made by a State Government under this Act shall be laid as soon as may be after it is made, before the State Legislature.

Power to
remove
difficulties.

106. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

Repeal and
savings.

107. (1) The Consumer Protection Act, 1986 is hereby repealed.

68 of 1986.

(2) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

10 of 1897.

STATEMENT OF OBJECTS AND REASONS

The Consumer Protection Act, 1986 (68 of 1986) was enacted to provide for better protection of the interests of consumers and for the purpose of making provision for establishment of consumer protection councils and other authorities for the settlement of consumer disputes, etc. Although, the working of the consumer dispute redressal agencies has served the purpose to a considerable extent under the said Act, the disposal of cases has not been fast due to various constraints. Several shortcomings have been noticed while administering the various provisions of the said Act.

2. Consumer markets for goods and services have undergone drastic transformation since the enactment of the Consumer Protection Act in 1986. The modern market place contains a plethora of products and services. The emergence of global supply chains, rise in international trade and the rapid development of e-commerce have led to new delivery systems for goods and services and have provided new options and opportunities for consumers. Equally, this has rendered the consumer vulnerable to new forms of unfair trade and unethical business practices. Misleading advertisements, tele-marketing, multi-level marketing, direct selling and e-commerce pose new challenges to consumer protection and will require appropriate and swift executive interventions to prevent consumer detriment. Therefore, it has become inevitable to amend the Act to address the myriad and constantly emerging vulnerabilities of the consumers. In view of this, it is proposed to repeal and re-enact the Act.

3. Accordingly, a Bill, namely, the Consumer Protection Bill, 2018, was introduced in Lok Sabha on the 5th January, 2018 and was passed by that House on the 20th December, 2018. While the Bill was pending consideration in Rajya Sabha, the Sixteenth Lok Sabha was dissolved and the Bill got lapsed. Hence, the present Bill, namely, the Consumer Protection Bill, 2019.

4. The proposed Bill provides for the establishment of an executive agency to be known as the Central Consumer Protection Authority (CCPA) to promote, protect and enforce the rights of consumers; make interventions when necessary to prevent consumer detriment arising from unfair trade practices and to initiate class action including enforcing recall, refund and return of products, etc. This fills an institutional void in the regulatory regime extant. Currently, the task of prevention of or acting against unfair trade practices is not vested in any authority. This has been provided for in a manner that the role envisaged for the CCPA complements that of the sector regulators and duplication, overlap or potential conflict is avoided.

5. The Bill also envisages provisions for product liability action on account of harm caused to consumers due to a defective product or by deficiency in services. Further, provision of "Mediation" as an Alternate Dispute Resolution Mechanism has also been provided.

6. The Bill provides for several provisions aimed at simplifying the consumer dispute adjudication process of the Consumer Disputes Redressal Agencies, *inter alia*, relating to enhancing the pecuniary jurisdiction of the Consumer Disputes Redressal Agencies; increasing minimum number of Members in the State Consumer Disputes Redressal Commissions and provisions for consumers to file complaints electronically, etc.

7. The Bill seeks to achieve the above objectives.

NEW DELHI;

The 2nd July, 2019.

RAM VILAS PASWAN.

Notes on Clauses

Clause 1.—This clause provides for the short title, commencement and application of the proposed legislation.

Clause 2.—This clause provides for the definition of the expressions used in the proposed legislation.

Clause 3.—This clause provides for establishment of a Central Consumer Protection Council by the Central Government, which shall be an advisory council. It also provides for its composition.

Clause 4.—This clause provides for the procedure for meetings of Central Council.

Clause 5.—This clause provides for the objects of Central Council, which shall be to render advice on promotion and protection of the consumers' rights.

Clause 6.—This clause provides for establishment of State Council by the State Governments, which shall be an advisory council. It also provides for its composition.

Clause 7.—This clause provides for the objects of the State Council, which shall be to render advice on promotion and protection of the consumers' rights.

Clause 8.—This clause provides for establishment of District Consumer Protection Councils by the State Governments, which shall be advisory councils.

Clause 9.—This clause provides for the objects of the District Consumer Protection Councils, which shall be to render advice on promotion and protection of the consumers' rights.

Clause 10.—This clause provides for establishment of Central Consumer Protection Authority comprising of a Chief Commissioner and such number of other Commissioners as may be prescribed, and its headquarter and regional and other offices.

Clause 11.—This clause provides that the Central Government may, by notification, make rules to provide for the qualifications for appointment, method of recruitment, procedure for appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of the service of the Chief Commissioner and Commissioners of the Central Authority.

Clause 12.—This clause provides that vacancy, etc., in the Central Authority shall not invalidate proceedings of Central Authority.

Clause 13.—This clause provides that the Central Government shall provide the Central Authority such number of officers and other employees as it considers necessary for the efficient performance of its functions under this legislation, and empowers the Central Government to prescribe the salary and allowances and the other terms and conditions of service of, the officers and other employees of the Central Authority and also empowers the Central Authority to engage, in accordance with the procedure specified by regulations, such number of experts and professionals to assist it in the discharge of its functions.

Clause 14.—This clause provides that the Central Authority shall regulate the procedure for transaction of its business and allocation of its business among Chief Commissioner and Commissioners as may be specified by regulations.

Clause 15.—This clause provides for setting up of an Investigation Wing in the Central Authority headed by a Director-General and with such number of Additional Director-General, Director, Joint Director, Deputy Director and Assistant Director, and delegation of powers by Director-General to them as the case may be, while conducting inquiries or investigations. The form and manner of investigation or inquiry by Director-General and submission to Central Authority as may be specified by the regulations.

Clause 16.—This clause provides for powers of the District Collector on matters relating to violations of consumer rights, unfair trade practices and false or misleading advertisements, within his jurisdiction and submit his report to the Central Authority or to the Commissioner of a regional office, as the case may be.

Clause 17.—This clause provides for filing of complaint relating to violation of consumer rights or unfair trade practices or false or misleading advertisements which are prejudicial to the interests of consumers as a class, before the District Collector or the Commissioner of regional officer of the Central Authority.

Clause 18.—This clause provides for the powers and functions of the Central Authority.

Clause 19.—This clause provides for the power of Central Authority to cause investigation to be made by the Director-General or by the District Collector or to refer matter for investigation to other Regulator.

Clause 20.—This clause provides for the power of Central Authority to recall goods, or withdrawal of services which are dangerous, hazardous or unsafe; reimbursement of the prices of goods or services so recalled to purchasers of such goods or services; and discontinuation of practices which are unfair and prejudicial to consumers' interest.

Clause 21.—This clause provides for the power of Central Authority to issue directions against false or misleading advertisements including imposition of penalties.

Clause 22.—This clause provides for the power of the Director-General or any other officer authorised by him or the District Collector for search and seizure after preliminary inquiry if there is any reason to believe that any person has violated any consumer rights or committed unfair trade practice or causes any false or misleading advertisement.

Clause 23.—This clause provides that the Central Government may, if it considers necessary, by notification, designate any statutory authority or body to exercise the powers and perform the functions of the Central Authority referred to in clause 10.

Clause 24.—This clause provides for preferring appeal to the National Commission against any order passed by the Central Authority under clauses 20 and 21.

Clause 25.—This clause provides for making provision of grants by the Central Government to the Central Authority for being utilised for the purposes of this Act.

Clause 26.—This clause provides for maintenance of proper accounts and other relevant records, preparation of an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

Clause 27.—This clause provides that the Central Authority shall submit an annual report on its functioning and performance and such other reports and returns as may be directed, and copies of such reports and returns shall be forwarded to the Central Government.

Clause 28.—This clause provides for establishment of District Consumer Disputes Redressal Commission at the District level by the State Government with a President and not less than two members and not more than such number of members as may be prescribed in consultation with Central Government in each District Commission. This clause also empowers the State Government to establish more than one District Commission in a district.

Clause 29.—This clause provides that the Central Government may, by notification, make rules to provide for the qualifications, method of recruitment, procedure for appointment, term of office, resignation and removal of the President and members of the District Commission.

Clause 30.—This clause provides that the State Government may, by notification, make rules to provide for salaries and allowances and other terms and conditions of service of the President, and members of the District Commission.

Clause 31.—This clause provides that any person appointed as President or, as the case may be, a member of the District Commission immediately before the commencement of this Act shall hold office as such as President, as the case may be, as member till the completion of his term for which he has been appointed.

Clause 32.—This clause empowers the State Government to fill up the vacancies in the office of the President or member of a District Commission, direct any other District Commission to exercise the jurisdiction in respect of that district also; or the President or a member of any other District Commission to exercise the powers and discharge the functions of the President or member of that District Commission also.

Clause 33.—This clause makes provision for the State Government to provide the District Commission with such officers and other employees as may be required to assist the District Commission in the discharge of its functions and that the officers and other employees of the District Commission shall discharge their functions under the general superintendence of the President of the District Commission. This clause also makes provision for prescribing the salaries and allowances and the other terms and conditions of service of the officers and other employees of the District Commission by the State Government.

Clause 34.—This clause provides for the pecuniary and geographical jurisdiction for filing of complaints in the District Commission. The pecuniary jurisdiction shall be for value of goods or services not exceeding one crore rupees. A consumer may file a complaint in a District Commission within the local limits of whose jurisdiction he resides or personally works for gain.

Clause 35.—This clause provides the manner in which complaint shall be made including enabling provision for filing of complaints electronically, fee to be prescribed for filing of complaints.

Clause 36.—This clause provides for the manner of conducting proceedings by the District Commission and includes time limit of twenty-one days for admissibility of complaints, deemed admissibility of complaints if admissibility is not decided within the said twenty-one days.

Clause 37.—This clause provides for reference by the District Commission of a complaint for mediation with the consent of both the parties to the dispute.

Clause 38.—This clause provides for the procedure on admission of a complaint by the District Commission.

Clause 39.—This clause provides for finding of the District Commission, after the proceeding has been conducted in a complaint if the District Commission is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services or any unfair trade practices are proved. This clause specifies the relief or compensation, a District Commission may grant to a consumer.

Clause 40.—This clause provides that a District Commission shall have the power to review its orders if there is any error apparent on the face of record.

Clause 41.—This clause provides for appeal against order of the District Commission to the State Commission on the grounds of facts or law in such form and manner as may be prescribed within a period of forty-five days from the date of the order; entertaining appeals by the State Commission on being satisfied that there was sufficient cause for not filing it; entertaining appeal by the State Commission only after the appellant has deposited in the

prescribed manner fifty per cent. of the amount ordered to be paid to the complainant; barring appeal from an order passed under clause 80 on the basis of settlement reached between the parties.

Clause 42.—This clause provides for establishment of State Commission by the State Government, setting up of regional benches of the State Commission, composition of the State Commission having a President and not less than four and not more than such number of members, as may be prescribed by the State Government in consultation with the Central Government.

Clause 43.—This clause empowers the Central Government to make rules for the qualification for appointment, method of recruitment, procedure for appointment, term of office, resignation and removal of the President and members of the State Commission.

Clause 44. - This clause provides that the State Government will make rules to provide for salaries and allowances and other terms and conditions of service of the President and members of the State Commission.

Clause 45.—This clause provides that any person appointed as President or, as the case may be, a member of the State Commission immediately before the commencement of this Act shall hold office as such, as President or member, as the case may be, till the completion of his term.

Clause 46. - This clause makes provision for the State Government to provide officers and other employees required to assist the State Commission in the discharge of its functions and also to prescribe the salaries and allowances payable to and the other terms and conditions of service of, the officers and other employees of the State Commission.

Clause 47.—This clause provides for the pecuniary and geographical jurisdiction for filing of complaints in the State Commission. The pecuniary jurisdiction shall be for value of goods or services exceeds rupees one crore but does not exceed rupees ten crore. It also provides that a consumer can file a complaint in State Commission within the local limits of whose jurisdiction he resides or personally works for gain.

Clause 48.—This clause empowers the State Commission, at any stage of the proceeding, to transfer any complaint pending before the District Commission to another District Commission within the State if the interest of justice so requires.

Clause 49.—This clause provides that the provisions under clauses 35, 36, 37, 38 and 39 shall, with such modifications as may be necessary, be applicable for the disposal of disputes by the State Commission and that the State Commission will deal with matters relating to declaring any terms of contract, which is unfair to any consumer, to be *null and void*.

Clause 50.—This clause empowers the State Commission to review any order made by it, if there is an error apparent on the face of record either of its own motion or on an application made by any of the parties within thirty days of such order.

Clause 51.—This clause provides for appeal against the order of the State Commission to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed if the appeal involves a substantial question of law; entertaining the appeal by the National Commission after the expiry of the period of thirty days on being satisfied that there was sufficient cause for not filing it within that period; entertaining the appeal by the National Commission only after the appellant has deposited in the prescribed manner fifty per cent. of the amount ordered to be paid.

Clause 52.—This clause provides for disposal of appeal by the State Commission or the National Commission within a period of ninety days from the date of its admission; not granting of adjournment without sufficient cause; recording of reasons in writing if the appeal is disposed of after the specified period of ninety days.

Clause 53.—This clause provides for establishment of the National Consumer Disputes Redressal Commission by the Central Government, which will ordinarily function in the National Capital Region and perform its functions at such other places as the Central Government may in consultation with the National Commission notify in the Official Gazette. The Central Government to establish regional benches of the National Commission at such places, as it deems fit.

Clause 54.—This clause provides for composition of the National Commission with a President and not less than four and not more than such number of members, as may be prescribed by the Central Government.

Clause 55.—This clause empowers the Central Government may, by notification, to make rules to provide for qualifications, appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the President and members of the National Commission with provision that the President and members of the National Commission shall hold office for such term as specified in the rules made by the Central Government but not exceeding five years from the date on which he enters upon his office and shall be eligible for re-appointment and that no President or member shall hold office as such after he has attained such age as specified in the rules made by the Central Government which shall not exceed seventy years in the case of the President and sixty-seven years in the case of any other member. Sub-clause (2) of this clause provides that neither the salaries and allowances nor the other terms and conditions of service of President and members of the National Commission shall be varied to his disadvantage after his appointment.

Clause 56.—This clause provides that the President and every other member of the National Commission appointed immediately before the commencement of section 177 of the Finance Act, 2017, shall continue to be governed by the provisions of the Consumer Protection Act, 1986 and the rules made thereunder, as if this Act had not come into force.

Clause 57.—This clause makes provision for the Central Government to provide the National Commission such number of officers and other employees to assist the National Commission in the discharge of its functions and prescribing the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the National Commission.

Clause 58.—This clause provides for the original and appellate jurisdiction for filing of complaints in the National Commission. The pecuniary jurisdiction will be for value of goods and services exceeding ten crore rupees.

Clause 59.—This clause provides that the provisions relating to complaints under clauses 35, 36, 37, 38 and 39 shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the National Commission. Sub-clause (2) provides that the National Commission may also declare any terms of contract which is unfair to any consumer to be *null and void*.

Clause 60.—This clause provides for the National Commission to review its own orders if there is an error apparent on the face of the record.

Clause 61.—This clause provides for the aggrieved party applying to the National Commission setting aside its order passed *ex parte*.

Clause 62.—This clause empowers the National Commission, at any stage of the proceeding, either on the application of the complainant or of its own motion to transfer any complaint pending before the District Commission of one State to a District Commission of another State or before one State Commission to another State Commission.

Clause 63.—This clause provides that in the case of the office of President in the National Commission is vacant or a person occupying such office is, by reason of absence

or otherwise, or the President is unable to perform the duties for any reasons, these shall be performed by the senior-most member of the National Commission.

Clause 64.—This clause provides that no act or proceeding of the District Commission, the State Commission or the National Commission shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.

Clause 65.—This clause provides for the procedure for service of notice, etc.

Clause 66.—This clause provides that in the larger interest of consumers, the National Commission or the State Commission may direct any individual or organisation or expert to assist the National Commission or the State Commission.

Clause 67.—This clause provides for appeal against the order of the National Commission shall be made to the Supreme Court and every such appeal shall be entertained by the Supreme Court only after the appellant has deposited fifty per cent. of the amount ordered by National Commission in the manner as may be prescribed, etc.

Clause 68.—This clause provides that every order of a District Commission or the State Commission or the National Commission, as the case may be, shall, if no appeal has been preferred against such order under the provisions of this Act, be final.

Clause 69.—This clause provides for a limitation period of two years from the date on which the cause of action has arisen for filing a complaint before the District Commission, the State Commission or the National Commission with further provision that a complaint may be entertained after the limitation period if the complainant satisfies that he had sufficient cause for not filing the complaint within such period. This clause also provides that no such complaint shall be entertained unless the District Commission or the State Commission or the National Commission, as the case may be, records its reasons for condoning such delay.

Clause 70.—Sub-clause (1) of this clause provides the administrative control of the National Commission over all the State Commissions and the District Commissions to ensure that the objects and purposes of the Act are best served and the standards set by the National Commission are implemented without interfering with their quasi-judicial freedom. In exercising administrative control, the National Commission will have authority to lay down adequate standards in consultation with the Central Government from time to time for better protection of the interests of consumers; to monitor performance of the State Commission in terms of their disposal by calling for periodical returns regarding the institution, disposal and pendency of cases; investigating into any allegations against the President and Members of a State Commission and submitting inquiry report to the State Government concerned along with copy endorsed to the Central Government for necessary action; issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the opposite parties, furnishing of English translation of judgments written in any language, speedy grant of copies of documents; overseeing the functioning of the State Commission or the District Commission either by way of inspection or by any other means the President may like to order from time to time. Sub-clause (2) provides for constitution of a monitoring cell by the President of the National Commission to oversee the functioning of the State Commissions from the administrative point of view. Sub-clause (3) provides for the State Commission to have administrative control over all the District Commissions within its jurisdiction in all matters referred to in sub-clauses (1) and (2). Sub-clause (4) provides for furnishing of any information including the pendency of cases by the National Commission and the State Commission to the Central Government periodically or as and when required. Sub-clause (5) provides for furnishing of any information including the pendency of cases by the State Commission to the State Government periodically or as and when required.

Clause 71.—This clause provides for enforcement of orders of the District Commission, the State Commission or the National Commission to be in the same manner as if it were a

decree made by a Court in a suit before it and the provisions of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 shall, as far as may be, applicable, subject to the modification that every reference therein to the decree shall be construed as reference to the order made under the Act.

Clause 72.—This clause provides for punishment for non-compliance of the orders of the District Commission or the State Commission or the National Commission with imprisonment for a term which shall not be less than one month, but which may extend to three years, or with fine, which shall not be less than twenty-five thousand rupees, but which may extend to one lakh rupees, or with both; the District Commission, the State Commission or the National Commission to have the power of a Judicial Magistrate of the First Class for the trial of offences under sub-clause (1), and on conferment of such powers, the District Commission or the State Commission or the National Commission, as the case may be, shall be deemed to be a Judicial Magistrate of First Class for the purpose of the Code of Criminal Procedure, 1973. Sub-clause (3) provides summary trial power to the District Commission or the State Commission or the National Commission.

Clause 73.—This clause provides for appeal against order passed under section 72. Sub-clause (2) provides no appeal shall lie before any court from any order of a District Commission or a State Commission or the National Commission. Sub-clause (3) provides thirty days time from the date of the order of a District Commission or a State Commission or the National Commission and also provides to condone delay by State Commission or the National Commission or the Supreme Court for entertaining the appeal beyond the thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period of thirty days.

Clause 74.—This clause provides for establishment of consumer mediation cell attached to the District Commissions, the State Commissions and the National Commission and each of the regional benches; sub-clause (3) empowers the State Government and the Central Government to decide the composition of mediation cell; sub-clause (4) provides that every mediation cell shall maintain a list of empanelled mediators, a list of cases handled by the cell, record of proceeding and any other information as may be specified by regulations and submit a quarterly report to the District Commission, the State Commission or the National Commission to which it is attached in the manner specified by regulations.

Clause 75.—This clause provides for the procedure of empanelment of mediators in the mediation cell attached to the District Commission or the State Commission or the National Commission and empanelled mediators shall be valid for five years and eligible to be considered for another term subject to such conditions as may be specified by regulations.

Clause 76.—This clause provides for nominating mediators from the panel, considering their suitability for resolving the consumer dispute involved.

Clause 77.—This clause provides that it shall be the duty of mediator to disclose certain facts which may likely to give rise to a justifiable doubt as to his independence or impartiality.

Clause 78.—This clause provides for replacement of a mediator by the District Commission or the State Commission or the National Commission on the information furnished by the mediator or on the information received from any other person including parties to the complaint and after hearing the mediator.

Clause 79.—This clause provides for the procedure of mediation.

Clause 80.—This clause provides for provisions relating to settlement through mediation and the role of mediator when an agreement is reached between the parties with respect to all of the issues involved in the consumer dispute or with respect to only some of the issues, and in the event where no agreement is reached between the parties.

Clause 81.—This clause provides for passing of order within seven days of the receipt of any settlement by the District Commission or the State Commission or the National

Commission recording that a settlement has been reached between the parties and disposal of the matter; hearing other issues in case of partial settlement of the dispute; continuing hearing all issues where the dispute could not be settled.

Clause 82.—This clause provides for product liability action by a complainant for any harm caused by a defective product manufactured by a product manufacturer or serviced by a product service provider or sold by a product seller.

Clause 83.—This clause states that a product liability action may be brought by a complainant against a product manufacturer or a product service provider or a product seller, as the case may be, for any harm caused to him on account of a defective product.

Clause 84.—This clause provides for the grounds on which a product manufacturer shall be liable in a product liability action.

Clause 85.—This clause provides for the grounds on which a product service provider shall be liable in a product liability action.

Clause 86.—This clause provides for the circumstances under which a product seller who is not a product manufacturer shall be liable in a product liability action.

Clause 87.—This clause provides for exceptions to product liability action against product seller and manufacturer.

Clause 88.—This clause provides for the penalty for non-compliance of direction of Central Authority issued under clauses 20 and 21.

Clause 89.—This clause provides for punishment by a Court for false or misleading advertisement by any manufacturer or service provider with imprisonment for a term which may extend to two years and with fine which may extend to ten lakh rupees; and for every subsequent offence, with imprisonment for a term which may extend to five years and with fine which may extend to fifty lakh rupees.

Clause 90.—This clause provides for higher punishment with imprisonment and fine by a Court to a person who, by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any product containing an adulterant, with provision for suspension and cancellation of licence issued to the person.

Clause 91.—This clause provides for punishment with imprisonment and fine by a Court to a person who, by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any spurious goods, with provision for suspension and cancellation of licence issued to the person.

Clause 92.—This clause provides for a competent court to take cognizance of any offence under clauses 88 and 89 only on a complaint filed by the Central Authority or any officer authorised by it in this behalf.

Clause 93.—This clause provides for punishment for vexatious search by the Director-General or any other officer, exercising powers under clause 22, knowingly that there are no reasonable grounds for so doing and yet searches, or causes to be searched any premises or seizes any record, register or other document or article, with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees or with both.

Clause 94.—This clause empowers the Central Government to take such measures in the manner as may be prescribed for the purposes of preventing unfair trade practices in e-commerce, direct selling and also to protect the interest and rights of consumers.

Clause 95.—This clause provides that the Presidents, members, officers and other employees of the District Commission, the State Commission and the National Commission, the Chief Commissioner and all other officers and employees of the Central Authority and other persons performing any duty under the proposed legislation, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 96.—This clause provides for compounding of offences punishable under sections 88 and 89 by the Central Authority either before or after the institution of the prosecution on payment of such amount as may be prescribed.

Clause 97.—This clause provides for the manner of crediting penalty collected under clause 21 and the amount collected under clause 96.

Clause 98.—This clause makes provision for protection of action taken in good faith by the members of the District Commission, the State Commission and the National Commission, the Chief Commissioner, the Commissioner, any officer or employee and other person performing any duty under the proposed legislation.

Clause 99.—This clause empowers the Central Government to give directions on questions of policy to the Central Authority.

Clause 100.—This clause provides that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Clause 101.—This clause provides for the power to the Central Government to make rules.

Clause 102.—This clause provides for the power to the State Governments, to make rules, conforming to the model rules made by the Central Government.

Clause 103.—This clause empowers the National Commission to make regulations not in consistent with the proposed legislation to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the proposed legislation, with previous approval of the Central Government.

Clause 104.—This clause empowers the Central Authority to make regulations consistent with this Act, for the purpose of giving effect to the provisions of this Act, with the previous approval of the Central Government.

Clause 105.—This clause provides for laying of every rule and every regulation made by the Central Government, the National Commission and the Central Authority under the proposed legislation before each House of Parliament and also every rule made by a State Government before the State Legislature.

Clause 106.—This clause provides for the power to remove difficulties that may arise in giving effect to the provisions of the proposed legislation.

Clause 107.—This clause provides for repeal and savings.

FINANCIAL MEMORANDUM

Clause 10 seeks to establish an authority to be known as the Central Consumer Protection Authority (Central Authority) to be headed by a Chief Commissioner and such number of other Commissioners to exercise powers and discharge functions under the proposed legislation.

2. Clause 11 provides for making rules by the Central Government in regard to the qualifications for appointment, method of recruitment, procedure for appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of the service of the Chief Commissioner and Commissioners of the Central Authority.

3. Clause 13 provides that the Central Government shall provide the Central Authority such number of officers and other employees as it considers necessary for the efficient performance of its functions and the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Central Authority. It also provides that the Central Authority may engage, in accordance with the procedure specified by regulations, such number of experts and professionals as it deems necessary to assist it in the discharge of its functions.

4. Clause 15 provides that the Central Authority shall have an Investigation Wing for the purpose of conducting inquiry or investigation and may appoint a Director-General and such number of Additional Director-General, Director, Joint Director, Deputy Director and Assistant Director.

5. Clause 30 provides for the salaries and allowances payable to, and other terms and conditions of service of, the President and members of District Commission to be prescribed by the State Government.

6. Clause 33 provides that the State Government shall provide the District Commission such officers and other employees to assist the District Commission in the discharge of its functions and the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the District Commission shall be prescribed by the State Government.

7. Clause 44 provides for the salaries and allowances payable to, and other terms and conditions of service of, the President and members of the State Commissions to be prescribed by the State Government.

8. Clause 46 provides that the State Government shall provide the State Commission such officers and other employees to assist the State Commission in the discharge of its functions and the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the State Commission shall be prescribed by the State Government.

9. Clause 55 provides that the Central Government may, by notification, make rules to provide for qualifications, appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the President and members of the National Commission.

10. Sub-clause (1) of clause 57 provides that the Central Government, in consultation with the President of the National Commission shall provide such number of officers and other employees to assist the National Commission in discharge of its functions as it may think fit. Sub-clause (3) provides that the salaries and allowances payable to, and the other terms and conditions of the service of, the officers and other employees of the National Commission shall be as may be prescribed by the Central Government.

11. Sub-clause (2) of clause 70 seeks to set up a monitoring cell to be constituted by the President of the National Commission to oversee the functioning of the State Commissions from the administrative point of view.

12. Sub-clause (1) of clause 74 provides that the State Government shall establish a consumer mediation cell to be attached to each of the District Commissions and the State Commissions of that State. Sub-clause (2) provides that the Central Government shall establish a consumer mediation cell to be attached to the National Commission. Sub-clause (3) provides that a consumer mediation cell shall consist of such persons as may be prescribed.

13. The financial implications arising from the establishment of the proposed Central Consumer Protection Authority is estimated at an annual recurring expenditure of rupees eight crore to cover operating costs including salaries and allowances. Appropriate Budgetary allocations shall be made to meet this expenditure from the annual budget of the Department of Consumer Affairs.

14. It would be difficult to indicate the exact expenditure involved in the appointment of additional members and officers and employees of the District Commission and the State Commission as this would depend upon the actual number of such members or officers and other employees appointed by the State Governments. However, the expenditure on this account would be incurred by the State Governments. The Bill does not envisage any other expenditure of recurring or non-recurring.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 101 of the Bill empowers the Central Government to make, by notification in the Official Gazette, rules for the purpose of carrying out the provisions of the proposed legislation. Sub-clause (2) specifies the matters in respect of which such rules may be made. These matters, *inter alia*, include—(a) the other class or classes of persons including public utility entities under sub-clause (19) of clause 2; (b) the contest, lottery, game of chance or skill which are to be exempted under sub-item (b) of item (iii) of sub-clause (47) of clause 2; (c) the manner of issuing bill or cash memo or receipt for goods sold or services rendered under item (vii) of sub-clause (47) of clause 2; (d) the number of other official or non-official members of the Central Council under item (b) of sub-clause (2) of clause 3; (e) the time and place of meeting of Central Council and the procedure for the transaction of its business under sub-clause (2) of clause 4; (f) the number of Commissioners in the Central Authority under sub-clause (2) of clause 10; (g) the qualifications for appointment, method of recruitment, procedure for appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of the Chief Commissioner and other Commissioners of the Central Authority under clause 11; (h) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of Central Authority under sub-clause (2) of clause 13; (i) the qualifications for appointment of Director General, Additional Director-General, Director, Joint Director, Deputy Director and Assistant Director and the manner of appointment under sub-clause (2) of clause 15; (j) the manner of taking copies or extracts of document, record or article seized or produced before returning to the person under sub-clause (3) of clause 22; (k) the officer and the manner of disposing of articles which are subject to speedy or natural decay under sub-clause (4) of clause 22; (l) the form and manner for preparing annual statement of accounts by Central Authority in consultation with the Comptroller and Auditor-General of India under sub-clause (1) of clause 26; (m) the form in which, and the time within which, an annual report, other reports and returns may be prepared by the Central Authority under sub-clause (1) of clause 27; (n) the qualifications for appointment, method of recruitment, procedure for appointment, term of office, resignation and removal of President and members of the District Commission under clause 29; (o) the other value of goods and services in respect of which the District Commission shall have jurisdiction to entertain complaints under the proviso to sub-clause (1) of clause 34; (p) the manner of electronically filing complaint under the proviso to sub-clause (1) of clause 35; (q) the fee, electronic form and the manner of payment of fee for filing complaint under sub-clause (2) of clause 35; (r) the cases which may not be referred for settlement by mediation under sub-clause (1) of clause 37; (s) the manner of authentication of goods sampled in case of National Commission under item (c) of sub-clause (2) of clause 38; (t) any other matter which may be prescribed under item (f) of sub-clause (9) of clause 38; (u) the fund where the amount obtained may be credited and the manner of utilisation of such amount under sub-clause (2) of clause 39; (v) the form and the manner in which appeal may be preferred to the State Commission under clause 41; (w) the qualifications for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the President and members of the State Commission under clause 43; (x) the other value of goods and services in respect of which the State Commission shall have jurisdiction under the proviso to sub-item (i) of item (a) of sub-clause (1) of clause 47; (y) the form and manner of filing appeal to the National Commission, and the manner of depositing fifty per cent. of the amount before filing appeal, under sub-clause (1) of clause 51; (z) the number of members of the National Commission under item (b) of clause 54; (za) the qualifications, appointment, term of office, salaries and allowances, resignation, removal and other terms and conditions of service of President and members of the National Commission under sub-clause (1) of clause 55; (zb) the salaries and allowances payable to, and other terms and conditions of service of, the officers and other employees of the National Commission under sub-clause (3) of clause 57; (zc) the other value of goods and services in respect of which the National Commission shall have jurisdiction under the proviso to sub-item (i) of item (a) of sub-clause (1) of clause 58; (zd) the manner of depositing fifty per cent. of the amount under the second proviso to

clause 67; (ze) the form in which the National Commission and the State Commission shall furnish information to the Central Government under sub-clause (4) of clause 70; (zf) the persons in the consumer mediation cell under sub-clause (3) of clause 74; (zg) the measures to be taken by the Central Government to prevent unfair trade practices in e-commerce, direct selling, etc., under clause 94; (zh) the amount for compounding offences under sub-clause (1) of clause 96; (zi) the fund to which the penalty and amount collected shall be credited under clause 97; and (zj) any other matter which is to be, or may be prescribed, or in respect of which provisions are to be, or may be, made by rules.

2. Sub-clause (1) of clause 102 of the Bill empowers the State Government to make, by notification in the Official Gazette, rules for the purpose of carrying out the provisions of the proposed legislation. Sub-clause (2) specifies the matters in respect of which such rules may be made. These matters, *inter alia*, include—(a) the other class or classes of persons including public utility entities under sub-clause (19) of clause 2; (b) the contest, lottery, game of chance or skill which are to be exempted under sub-item (b) of item (iii) of sub-clause (47) of clause 2; (c) the number of other official or non-official members of the State Council under item (b) of sub-clause (2) of clause 6; (d) the time and place of meeting of the State Council and the procedure for the transaction of its business under sub-clause (4) of clause 6; (e) the number of other official and non-official members of District Council under item (b) of sub-clause (2) of clause 8; (f) the time and place of meeting of the District Council and procedure for the transaction of its business under sub-clause (4) of clause 8; (g) the number of members of the District Commission under item (b) of sub-clause (2) of clause 28; (h) the salaries and allowances payable to, and other terms and conditions of service of, the President and members of the District Commission under clause 30; (i) the salaries and allowances payable to, and other terms and conditions of service of, the officers and other employees of the District Commission under sub-clause (3) of clause 33; (j) the manner of authentication of goods sampled by the State Commission and the District Commission under item (c) of sub-clause (2) of clause 38; (k) the manner of depositing fifty per cent. of the amount before filing appeal under the second proviso to clause 41; (l) the number of members of the State Commission under sub-clause (3) of clause 42; (m) the salaries and allowances payable to, and other terms and conditions of service of, the President and members of the State Commission under clause 44; (n) the salaries and allowances payable to, and other terms and conditions of service of, the officers and other employees of the State Commission under sub-clause (3) of clause 46; (o) the form in which the State Commission shall furnish information to the State Government under sub-clause (5) of clause 70; (p) the persons in the consumer mediation cell under sub-clause (3) of clause 74; (q) any other matter which is to be, or may be prescribed, or in respect of which provisions are to be, or may be, made by rules.

3. Sub-clause (1) of clause 103 of the Bill empowers the National Commission, with the previous approval of the Central Government, to make regulations not inconsistent with the proposed legislation to provide for all the matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the proposed legislation. Sub-clause (2) provides that the regulations may make provisions for—(a) the costs for adjournment to be imposed by the District Commission under the second proviso to sub-clause (7) of clause 38; (b) the costs for adjournment to be imposed by the State Commission or the National Commission, as the case may be, under the second proviso to clause 52; (c) the maintenance of any other information by the consumer mediation cell under sub-clause (4) of clause 74; (d) the manner of submission of quarterly report by consumer mediation cell to District Commission, State Commission or the National Commission under sub-clause (5) of clause 74; (e) the qualifications and experience required for empanelment as mediator, the procedure for empanelment, the manner of training empanelled mediators, the fee payable to empanelled mediator, the terms and conditions for empanelment, the code of conduct for empanelled mediators, the grounds on which, and the manner in which, empanelled mediators shall be removed or empanelment shall be cancelled and the other matters relating thereto under sub-clause (2) of clause 75; (f) the conditions for re-empanelment of mediators for

another term under sub-clause (3) of clause 75; (g) the other facts to be disclosed by mediators under sub-clause (c) of clause 77; (h) the time within which, and the manner in which, mediation may be conducted under sub-clause (3) of clause 79; and (i) such other matter for which provision is to be, or may be, made by regulation.

4. Sub-clause (1) of clause 104 of the Bill empowers the Central Authority, with the previous approval of the Central Government, to make regulations not inconsistent with the proposed legislation, for the purpose of giving effect to the provisions of this legislation. Sub-clause (2) provides that the regulations may make provisions for—(a) the procedure for engaging experts and professionals and the number of such experts and professionals under sub-clause (3) of clause 13; (b) the procedure for transaction of business and the allocation of business of the Chief Commissioner and Commissioner under sub-clause (1) of clause 14; (c) the form, manner and time within which, inquiries or investigation made by the Director-General shall be submitted to the Central Authority under sub-clause (5) of clause 15; and (d) such other matter for which provision is to be, or may be, made by regulation.

5. The matters in respect of which rules and regulations may be made relate to matters of procedure or administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL No. 145 OF 2019

A Bill further to amend the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

Short title and commencement. **1. (1)** This Act may be called the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 2019.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of section 2. **2.** In the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the principal Act), in section 2, clause (fa) and clause (fb) shall be renumbered as clause (fb) and (fc) respectively, and before clause (fb) as so renumbered, the following clause shall be inserted, namely:—

40 of 1971.

'(fa) "residential accommodation occupation" in relation to any public premises means occupation by any person on grant of licence to him to occupy such premises on the basis of an order of allotment for a fixed tenure or for a period he holds office, in accordance with the rules and instructions issued in this regard, made under the authority of the Central Government, a State Government, a Union territory Administration or a statutory authority, as the case may be;':

3. In the principal Act, after section 3A, the following section shall be inserted, namely:—

Insertion of
new section
3B.

"3B. (1) Notwithstanding anything contained in section 4 or section 5, if the estate officer has information that any person, who was granted residential accommodation occupation, is in unauthorised occupation of the said residential accommodation, he shall—

Eviction from
residential
accommodation.

(a) forthwith issue notice in writing calling upon such person to show cause within a period of three working days why an order of eviction should not be made;

(b) cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the said residential accommodation, and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been served upon such person.

(2) The estate officer shall, after considering the cause, if any, shown by the person on whom the notice is served under sub-section (1) and after making such inquiry as it deems expedient in the circumstances of the case, for reasons to be recorded in writing, make an order of eviction of such person.

(3) If the person in unauthorised occupation refuses or fails to comply with the order of eviction referred to in sub-section (2), the estate officer may evict such person from the residential accommodation and take possession thereof and may, for that purpose, use such force as may be necessary."

4. In section 7 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

Amendment
of section 7.

"(3A) If the person in unauthorised occupation of residential accommodation challenges the eviction order passed by the estate officer under sub-section (2) of section 3B in any court, he shall pay damages for every month for the residential accommodation held by him.".

STATEMENT OF OBJECTS AND REASONS

The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (the said Act), was enacted to provide for eviction of unauthorised occupants from public premises and for certain incidental matters.

2. Government of India provides residential accommodation to its employees, Members of Parliament and other dignitaries while they are in service or till the term of their office on licence basis. As per the existing allotment rules, after the expiry of the terms and conditions of the licence, the occupants of such residential accommodations become unauthorised for staying in such accommodation and should vacate the same. The said Act confers powers upon the estate officers to evict such unauthorised occupants from "public premises" in a smooth, speedy and time-bound manner. Under the existing provisions, the eviction proceedings of unauthorised occupants from "public premises" take around five to seven weeks time. It may take around four more weeks if the unauthorised occupants file appeal under the said Act. However, eviction proceedings take much longer period than the timeline prescribed in the said Act. Sometimes, it takes years to evict the unauthorised occupants.

3. There are provisions for summary eviction proceedings under section 3A of the said Act in case of persons occupying "public premises" temporarily, that is, less than thirty days. Under the summary proceedings, the estate officer does not have to follow elaborate procedure prescribed, for serving notice, show cause, inquiry and hearing as per sections 4 and 5 of the said Act, before passing eviction order. However, these summary proceedings are not applicable to the occupants of residential accommodations given on licence basis. It is, therefore, proposed to apply summary eviction procedure to residential accommodation given on licence basis with a short show cause notice of three days to the unauthorised occupants by inserting new section 3B. It is also proposed to define the expression "residential accommodation occupation" by amending section 2.

4. It is often seen that the unauthorised occupants do not vacate the government accommodation on expiry of the terms and conditions of the licence as per the rules and uses dilatory tactics to withhold the accommodation, by challenging the eviction order before an appellate officer or before the High Court and by obtaining stay of the eviction order. In order to check this delay, it is also proposed to insert a new sub-section (3A) in section 7 of the said Act to the effect that if the person challenges the eviction order passed by the estate officer in any court, he has to pay the damages for every month for the residential accommodation held by him.

5. These amendments would facilitate smooth and speedy eviction of unauthorised occupants from residential accommodations, and ensure retrieval of the residential accommodation from the unauthorised occupants without requiring elaborate procedures under sections 4 and 5 of the said Act. This will further increase availability of residential accommodations to new incumbents and improve the overall satisfaction level.

6. It may be recalled that the Public Premises (Eviction of Unauthorised Occupants) Amendment Bill, 2017, for the aforementioned purpose, which was introduced and pending consideration and passing in the Lok Sabha lapsed on dissolution of the Sixteenth Lok Sabha. Hence, the Public Premises (Eviction of Unauthorised Occupants) Amendment Bill, 2019.

7. The Bill seeks to achieve the above objectives.

NEW DELHI;

The 2nd July, 2019.

HARDEEP S. PURI.

BILL NO. 146 OF 2019

A Bill further to amend the Jallianwala Bagh National Memorial Act, 1951.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

1. This Act may be called the Jallianwala Bagh National Memorial (Amendment) Act, 2019.

Short title and commencement.

25 of 1951.

2. In the Jallianwala Bagh National Memorial Act, 1951 (hereinafter referred to as the principal Act), in section 4, in sub-section (1),—

Amendment of section 4.

(i) clause (b) shall be omitted;

(ii) for clause (d), the following clause shall be substituted, namely:—

"(d) the Leader of Opposition recognised as such in the House of the People or where there is no such Leader of Opposition, then the Leader of the single largest Opposition Party in that House;".

3. In section 5 of the principal Act, the following proviso shall be inserted, namely:—

Amendment of section 5.

"Provided that the term of office of a Trustee nominated under clause (g) of sub-section (1) of section 4 may be terminated before the expiry of the period of five years by the Central Government.".

STATEMENT OF OBJECTS AND REASONS

The Jallianwala Bagh National Memorial Act, 1951 was enacted to provide for the erection and management of a National Memorial to perpetuate the memory of those killed or wounded on the 13th day of April, 1919, in Jallianwala Bagh, Amritsar. The Act provides for a Trust for the erection and management of the Memorial and also provided for composition of the Trust with certain Trustees for life.

2. Over a period of time, with the passing away of Trustees appointed for life, the situation changed significantly and the Government did not have proper representation on the Trust. Therefore with a view to fill up vacancies caused on account of passing away of the Trustees for life, the Act was amended in the year of 2006, *inter alia*, to change the composition of the Trust, to provide for fixed term of five years for nominated Trustee and for account and audit of the Trust, etc.

3. At present, in the composition of the Trust, certain inconsistencies have been noticed. There is a provision to make a party specific Trustee and for the Leader of Opposition in the Lok Sabha as one of Trustees. The term of nominated Trustees is five years and there is no provision in the Act to terminate a nominated Trustee before the expiry of his term. In view of the absence of designated Leader of Opposition in the Lok Sabha and a Trustee being a party specific, it has been felt necessary to amend the said Act to make it a political and also to provide for termination of nominated Trustees before the expiry of their term.

4. In view of the above, the Jallianwala Bagh National Memorial (Amendment) Bill, 2019, provides for the following, namely:—

(i) to delete "the President of the Indian National Congress" as a Trustee;

(ii) To make "the Leader of Opposition recognised as such in the House of the People or where there is no such Leader of Opposition, then, the Leader of the single largest Opposition Party in that House" a Trustee, in place of "the Leader of opposition in the Lok Sabha"; and

(iii) to confer power upon the Central Government to terminate the term of a nominated trustee before the expiry of the period of his term.

5. The Bill seeks to achieve the above objects.

NEW DELHI:

The 3rd July, 2019.

PRAHLAD SINGH PATEL.

BILL No. 147 OF 2019

A Bill further to amend the Central Universities Act, 2009.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Central Universities (Amendment) Act, 2019.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

25 of 2009.

2. After section 3B of the Central Universities Act, 2009 (hereinafter referred to as the principal Act), the following sections shall be inserted, namely:—

Insertion of new sections 3C and 3D.

“3C. There shall be established a University, which shall be a body corporate, to be known as the Central University of Andhra Pradesh, having its territorial jurisdiction extending to the whole of the State of Andhra Pradesh, as specified in the First Schedule to this Act.

Establishment of Central University of Andhra Pradesh.

3D. There shall be established a Tribal University, which shall be a body corporate, to be known as the Central Tribal University of Andhra Pradesh, having its territorial jurisdiction extending to the whole of the State of Andhra Pradesh, as specified in the First Schedule to this Act, to provide avenues of higher education and research facilities primarily for the tribal population of India.”.

Establishment of Central Tribal University of Andhra Pradesh.

Amendment
of section 5.

Substitution of
new Schedule
for First
Schedule.

3. In section 5 of the principal Act, the following proviso shall be inserted at the end, namely:—

“Provided that the Tribal University established under section 3D shall take additional measures for paying special attention to the tribal centric higher education and research, including art, culture and customs.”.

4. For the First Schedule to the principal Act, the following Schedule shall be substituted, namely:—

“THE FIRST SCHEDULE

[See section 3(4)]

Serial No.	Name of the State	Name of the University	Territorial jurisdiction
(1)	(2)	(3)	(4)
1.	Andhra Pradesh	Central University of Andhra Pradesh	Whole of the State of Andhra Pradesh.
2.	Andhra Pradesh	Central Tribal University of Andhra Pradesh	Whole of the State of Andhra Pradesh.
3.	Bihar	Central University of South Bihar	Territory in the south of the River Ganges in the State of Bihar.
4.	Bihar	Mahatma Gandhi Central University	Territory in the north of the River Ganges in the State of Bihar.
5.	Gujarat	Central University of Gujarat	Whole of the State of Gujarat.
6.	Haryana	Central University of Haryana	Whole of the State of Haryana.
7.	Himachal Pradesh	Central University of Himachal Pradesh	Whole of the State of Himachal Pradesh.
8.	Jammu and Kashmir	Central University of Kashmir	Kashmir Division of the State of Jammu and Kashmir.
9.	Jammu and Kashmir	Central University of Jammu	Jammu Division of the State of Jammu and Kashmir.
10.	Jharkhand	Central University of Jharkhand	Whole of the State of Jharkhand.
11.	Karnataka	Central University of Karnataka	Whole of the State of Karnataka.
12.	Kerala	Central University of Kerala	Whole of the State of Kerala.
13.	Odisha	Central University of Odisha	Whole of the State of Odisha.
14.	Punjab	Central University of Punjab	Whole of the State of Punjab.
15.	Rajasthan	Central University of Rajasthan	Whole of the State of Rajasthan.
16.	Tamil Nadu	Central University of Tamil Nadu	Whole of the State of Tamil Nadu.”.

STATEMENT OF OBJECTS AND REASONS

The Central Universities Act, 2009 was enacted to establish and incorporate Universities for teaching and research in various States and for matters connected therewith or incidental thereto.

2. Establishment of one Central University and one Central Tribal University in the State of Andhra Pradesh will increase access and quality of higher education and also facilitate and promote avenues of higher education and research facilities for the people of the State. Further, the Tribal University will promote advance knowledge by providing instructional and research facilities in tribal art, culture and customs and advancement in technology to the tribal population of India. Apart from being focused to the tribal education, the Central Tribal University shall carry out all educational and other activities like any other Central University. At present, there is no Central University in the State of Andhra Pradesh while all other States, except Goa, have one or more Central University. Moreover, the establishment of a Central University and a Central Tribal University in the State of Andhra Pradesh is obligatory under the Andhra Pradesh Reorganisation Act, 2014.

3. Accordingly, it has been decided to amend the Central Universities Act, 2009 to provide for the establishment of one Central University by the name of "Central University of Andhra Pradesh" and one Tribal University by the name of "Central Tribal University of Andhra Pradesh" in the State of Andhra Pradesh.

4. The Bill seeks to achieve the above objectives.

NEW DELHI;

RAMESH POKHRIYAL NISHANK.

The 28th June, 2019.

FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to insert new sections 3C and 3D in the Central Universities Act, 2009, so as to establish two new universities as the body corporates to be known as the Central University of Andhra Pradesh and the Central Tribal University of Andhra Pradesh, having its territorial jurisdiction extending to the whole of the State of Andhra Pradesh.

2. The infrastructure for the two universities shall be set up in two phases, with a cap on expenditure, for four years. Approximately fifty per cent. of the projected cost will be spent in phase I, with a cap of four hundred fifty crore rupees for the Central University and four hundred twenty crore rupees for the Central Tribal University, being the total cost for phase I for the two universities as eight hundred seventy crore rupees. However, the expenditure would be met from the Consolidated Fund of India, through the budgetary provisions of the Ministry of Human Resource Development.

SNEHLATA SHRIVASTAVA,
Secretary General.